A Profitable Booke
OF
Mr. *Iohn Perkins*,
Sometimes Fellow of the Inner
TEMPLE.

Treating of the Lawes of ENGLAND.

And now Translated out of French into English for the benefit of young Students, and others,

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by deed indented, to take effect by way of grant, &c. But the Tenant in dower shall not distreyne for the rent because she had no reversion, And no clause of distresse is in the deed; And shee shall not have an action of debt because she hath an estate of Freehold in the Rent; but she shall have the same as a Rent secke; more shall be said of this in the Chapter of reservations.

7.E.1.34. 624. And it is to know, that a Surrender of a freehold made by deed indented upon condition is good, and if the Surrender be of an estate for yeares in Land, then the Surrender may be upon condition without deed: And if a Surrender be made of the Freehold by deed indented upon condition, that if he to whom the Surrender is made, doe not goe unto Yorke within one moneth next following the date of the Surrender, That then it shall be lawfull for him who made the surrender to reenter into the Land, the same is a good Surrender upon condition.

CHAPTER 10.

CHAPTER 10th.

Reservations.

625 NOw is to speake of Reservations. And as to that; Know, That there are many words by which a man may reserve unto himselfe that which was not in him before, and abridge the tenure of that which was in him before, viz. Tenendum, Reservandum, Reddendum, Solvendum, Faciendum, and other the like, And there are divers words by which a man cannot properly reserve any thing, but those which were in him before, viz. Exceptis, Reservatis, præter salvis and other the like, &c.

626. And therefore if a man be seised in Fee, of one acre of Land, he may let the same acre for life, to hold of him by Fealty, and 10 s. Rent, and if the Fealty or the Rent be behind, he may distrein, and yet the same was in Esse before; See the reason thereof in the Booke of Mr. Litleton, in the Chapter of Rents, and for there many good Cases concerning Reservations. And it is know, that a Reservation ought to be out of such a thing unto which a man may resort for to take a distresse, as out of Land, or a House: and not out of a Rent, &c. if not that the Reservation be made by our soveraigne Lord M. 21. E. 3. 49.

Lord the King, of whose title I will not speake.

627. But if there be Lord, Mesne and Tenant, and the Mesne giveth the meanalty in taile, reserving fealty, and rent, this is a good reservation, because the tenancy may come unto the Donee: But the Donor nor his heire shall not distraine for the fealty, nor the Rent, notwithstanding that they be behind, before the tenancy be come unto the Donee, And then he shal distreine for all the arrerages from the time of the guift, and the donee shall not avoid the same.

F. 12. E 4. 11. 628. If there be Lord, and Tenant by Fealty, and ii d. And the Lord release, or confirme the estate of the Tenant, to hold of him by 1 d. the same is good, M. 8. E 4. 9. and yet he held of the Lord by this 1 d. and more before, &c. And if a man seised of Land, doth give the same in taile reserving vii d. the same is a good reservation, by the word Reservandum.

629. If there be Lord, and Tenant by Fealty and vii. d. And the Lord doth release all his right unto the Tenant, or confirmeth the estate of the Tenant reserving unto him 1 d. it is good, yet it F. 44. E. 3. 21. was in fee before, &c. And if the husband and wife grant, and render a manor for terme of life by fine, rendering the first yeare 1. d. and for 6. yeares then next following every yeare a Rose at the Feast of Easter, And after the 6 yeares every yeare 10 l. in money with clause of

of distresse; This fine shall be received: But a fine with clause of reentry shall not be received, because that then the estate should be defeisable, which is against the nature of a fine, &c. For finis finem litibus imponit, &c.

630. If a man seised of Land, leaseth the same for life, rendring for the first 6. yeares 3. quarters of wheate, and if hee hold over, &c. yeilding 5 l. by the yeare this is a good Reservation by this word Reddendum, &c

631. If there be Lord and tenant by Knights service, and 20 s. Rent, and the Lord confirme the estate of the Tenant rendring unto him onely homage, fealtie, & escuage when it shall be assessed by parliament unto 40 s. 40 s. and when lesse, lesse, by this confirmation the 20 s. rent is determined, & yet this word (Reddendum) is more properly the word of the confirmer then of the confirmee, &c. M. 12. E. 3. Exec. 6.

632. And if a man seised of Land, leaseth the same for life, or giveth it in tayle, Solvendum sibi & hæredi, his annuatim 20 d. it is a good Reservation. And if there be Lord and Tenant by fealty and xii d. And the Lord doe confirme the estate of the Tenant, Ad solvendum sibi 1 d. the same is good. And if a man seised of Land leaseth the same for life, or giveth the same in tayle unto a Stranger, Pro homagio suo faciendo, it is a good Reservation, &c

633. If there be Lord and tenant by

Fealty, and xii. d. and the Lord doth confirms the estate of the Tenant Ad faciendum sibi fidelitatem tantum, it is a good confirmation, and by the same the Rent shall be determined, &c. And it is to know, That every thing which is reserved by any of the words aforesaid, ought to be within the purport of the same words, otherwise the reservation is not good, if not that it be in speciall cases, &c.

12. H. 3. gard. 151.

13. R. 2. Adowry 89.

P. 49. E. 3. 10.

634. If there be Lord, and Tenant by Knights service, and the Tenant giveth the Tenancy in taile Faciendum forinsecum servicium quantum ad eandem terram pertinet. By these words the donee shall hold of the Donor by Knights service, &c.

635. If there be Lord and Tenant by Knights service, and the Tenant before the statute of West. 3. called Quia emptores terrarum lex a fine of the Tenancy upon a grant, and render unto C. D. Reddendum inde ad festum Nativitat. Sancti Johannis Baptistæ annuatim id. Pro omnibus serviciis secularibus & demandis, Et faciendum capitalibus Dominis feodi illius predict; The Tenant who levieth the fine Hæred. & assign. suis omnia servicia debita, & consueta; In this Case the conusee holdeth of the conusor by Knights service, notwithstanding that he doth expresse that hee shall doe the services Capitalibus Dominis; for by these words on this case hee shall not hold De capitali. Dom. because there is a tenure before expresse

M. 2. E. 3. 33.

prefſed in the fine, viz. by theſe words Reddendum inde annuatim ad feſtum, &c. which words make a tenure of the cauſor, ſo that if he ſhall hold De Capitali Dom. then he ſhould hold the Land of two ſeverall Lords, the which the Law will not ſuffer in this caſe. But if theſe words were not in the note of the fine, viz. Reddendum inde ad feſtum Sancti Johannis Baptiſtæ annuatim id. Pro omnibus ſervicijs ſecularibus & demandis, Then by the other words the cauſee ought to hold of the Lord Peramount by the like ſervices, as the cauſor held, &c.

636. Two joynt tenants of Land, or houſes, &c. by a ſpeciall meanes may hold by ſeverall ſervices, As put the caſe, there be Lord and two joynt tenants of two acres of Land by Fealty and xii. d. & one of them at this day doth enfeoffe a ſtranger of that which doth belong unto him upō condition. In this caſe the feoffee ſhal hold of the Lord by Fealty and xii. d. And if the Lord grant unto a ſtranger the ſervice of the feoffee, and the feoffee doth attorne, and afterwards the condition be broken, and the feoffor entreth: In this caſe the feoffor, and the other joynt tenants, are joynt tenants as they were before the feofment made, and yet they hold by ſeverall ſervices, and of ſeverall Lords, but not the ſame Land, for one joynt tenant holdeth one moity of one Lord, the other moity of the other Lord, and the other joynt tenant holdeth, &c.

637. If there be Lord and Tenant, and the tenant at this day doth give the tenancy in taile, Tenendum de Capitali Dom. this Tenendum is void, because that the Law hath made a tenure betwixt the Donor, and the Donee, &c. And then if the Tenendum should be good he should hold the same Land of two Lords which the Law will not suffer; if not that it be by matter of conclusion, &c.

638. If a man be seised of a manor in fee in which manor there is a Mill for the grinding of Wheate, and other graine, and before the Statue of Quia emptores terrarum, hee doth enfeoffe certaine tenants of the manor of parcell of the manor, doing suit at his Mill, this is a good tenure by the word. (doing) And it is said if the feoffor leaseth the manor unto a stranger for like rendring unto him 40. s. For the manor, and 30.s. for the multure, and the tenants of the manner attorne unto the lessee, that the 20.s. are a rent charge issuing out of the whole manor, &c.

9.A.T.p.14
M.9.E.3.3.

639. And it is to know, that these words Exceptis, & præter, are alwayes of such things which the Feoffor, Donor, Graunter, Lessor, Releasor, or Confirmor have in possession at the time of the Feoffment, guift, grant, Lease, Release and confirmation. And therefore if a man seised of Land, leaseth the same Land for life, Excepto xii.d. or Præter xii.d. it is no good Reservation, Causa patet, &c.

640. But

640. But if a man seised of Land in fee, leaseth the same for life, Reservatis sibi inde xii.d. this is as well as if he had said, Reservando sibi inde xii. d. For there is not any difference, but one sentence ponitur absolutè, and the other Ponitur gerundive.

641. But if a man be seised of foure acres of Land, and of a house within the Towne of Dale wherein is a Chamber, and doth enfeoffe a stranger by deed of all his Land, and Tenements which he hath in the Towne of Dale Excepto, or reservato sibi, the Chamber, or Præter the Chamber, and sheweth the certainty thereof, in that case the Chamber shall not passe by the feoffment, &c.

642. If a man seised of a manno: leaseth the same manno: by deed indented unto a stranger for life, Exceptis & reservatis to the lesso: Omnibus grossis arboribus in dicto manerio crescent. By this Lease the great Trées shall not passe. T. 22 E. 3. 8.

643. And if a man seised of a manno: doth lease the same manno: by deed indented for life, Exceptis & reservatis quod bene licear, to the lesso, Succidere, dare & vendere omnes grossas arbores in dicto Manerio crescentes, &c. Quære, if the great Trées shall passe by the Lease, &c. A man seised of a manno: unto which an advowson is appendant, doth thereof enfeoffes a stranger, Exceptis, reservatis, &c. Præter one acre, and name the acre, and the Advowson, this is a good excep- 3. H. 6. 46. 7 E. 3. 66.

tion, and the acre, nor the Advowson, shall not passe by the feoffment; And the Advowson shall be perpendant unto the acre which is reserved, &c.

644. If a man hath a Rent charge in fee issuing out of Land, and by fine he doth release unto the Tenant of the Land, all the right which he hath unto the Land Reservat. Excep. & præter. the Rent, it is a void exception. And so it is of a grant confirmation, &c. Mutatis mutandis, &c.

16. E 3. fines. 6. And if a man sell a wood except 20 Oxes and shetweth which in certaine, it is a good exception.

645. And it is to know that this word (salvo) shall be a good exception of such things which are in the possession of the feoffor, Donor, &c. At the time of the feoffment, guift, &c. And also this word (Salvo) giveth a new thing unto the feoffor or Donor which was not in him before, &c.

646. If a man be seised of a water in which he hath a fishing from the Towne of Dal in the County of Middlesex, unto the Totone of Sale in the same County, and upon the same water he hath a Mill; and hee doth grant unto a Stranger Totam partem piscariæ suæ de D. quam proc

34. Ass. p. 11. cul terr. inde extendant, ita quod nec ipse, nec hæredes sui, nec molendinarii de cetero cum retibus nec aliis ingen. piscar. Salvo tamen stagno molendini, this exception shal not put off the graunter of the piscarie in the same poole, and this

(Salvo)

(Salvo) shall have relation, onely for the repairing of the Mill, and to doe such things as are necessary unto the Mill, &c. But if I grant common unto a stranger, for all manner of cattell within my manor of Dale saving in one acre, and name the acre, the grantee shall have common in that acre, &c.

647. If there be Lord, and tenant by fealty and rii.d. rent, and the Lord doth release all his right unto the tenant, saving to him his rent, it is a good reservation, And the Lord shall have the rent in the same nature as hee had it before. T. 12. E. 4. 11. 19. Ass. p. 20.

648. If there be Lord and tenant by Knights service. viz. by homage, fealty, and escuage, and rii. d. Rent, and the Lord doth grant the rent unto a stranger saving unto him his seignory; it is a good saving. But notwithstanding that the Lord shall have the escuage, and yet it is not but a payment of money if the tenant will: and the grantee shall have the rii.d rent as a rent seck, &c. (A. 9) M. 2. H. 3. 89.

649. If a man hath a Parsonage, and a Vicarage unto the same Church, and of one Advowson. And by fine he granteth unto a stranger the Advowson of the same Church, saving unto the grauntor, and his heires, the presentation unto the vicarage, it is a good saving, &c.

650. If there be Lord and tenant by Knights service, and the tenant doth give the tenancy in taile to hold of him by (P) 22

I.D. for all services Salvo forinseco servicio In this case, this Salvo shall make the Donee to hold of the Donor by Knights service, and yet the same was not in the Donor before, but the Donor was chargeable with Knights service for the same Land, unto him of whom hee held it. Forinsecum servicium is such service by which the Donor held the same Land, which hee gave, &c. See diverse good Cases concerning reservation of Deedes in the Chapters of Deedes, and conditions, &c.

31. Ass. p. 20.
26 Ass p 66.
27 Ass. p. 52.

651. Now is to shew what persons may by their reservations make a tenure. And unto what persons they may make such tenure, and then what things may be reserved to make a tenure; And when the heires of him unto whom the Reservation is made shall have the things reserved. And then something shall be said when the Reservation of colletterall things, which cannot make a tenure shall be good and when not, &c. And it is to know that before the Statute of Quia emptores terrarum, That hee who made an estate unto another in Lands, or Houses, might make a Reservation upon the same estate, according unto the interest which hee departed with, if not that it were in speciall Cases, &c.

652. And therefore if before the Statute of Quia Emptores terrarum, there were two joynt tenants of Lands, or Houses in fee which they held by fealty, and 2.s.

Rent,

Rent, or by fealty and a horse, and they enfeoffe a stranger of the Lands or Houses, to hold of one of them by Fealty and rid. The feoffee shall hold the moity of him by fealty, and rid. because by the feoffment hee did depart but with a moity in right, and yet he shall have the whole Rent which is reserved, notwithstanding that it be a severable Rent, because it is reserved onely to him, and hee may well reserve the same unto him alone, notwithstanding that hee joyned in feoffment with his companion, &c. And the feoffee shall hold the other moity of the other joint tenant, to whom the reservation was not made by fealty, and rid. Rent, And he and his companion shall hold together the whole Land ouer by 2. s because that then the Rent is severable, and if they themselues held the same land ouer by a horse, then it is said, that the feoffee shall hold the moity of him by fealty and a Horse. Tamen Quære, because he was party unto the reservation made unto his companion, &c. But if the joynt tenants had enfeoffed a stranger to hold of both of them, or of one of them, and expressed no services, they are void words and the feoffee shall hold of them, as they held ouer.

653. If two joynt tenants were of Land, and before the Statute of Quia emptores terrarum, one of them doth enfeoffe a stranger of what thereof belongeth unto him without reserving any thing. The feoffee

feoffee shall hold of his feoffor by the moity of the services by which the feoffor, & his joynt companion held over, if the hold over by several services, &c. And notwithstanding this feofment, the feoffor & he who was his joynt companion shall hold the same Land over of their Lord as they held before, so as the avoury of the Lord is not altered by this feofment. And also the feoffor shall not distrein the cattell of him who was his joynt companion, because he hath an interest in the Land by a more ancient title then his seigneure began, &c.

564. If before the statute of Quia emptores terrarum, there had been a Lord, mesne, and tenant, and the mesne, and the tenant had entermaried, the same should not have altered the Lord avoury. Or if the tenant had enfeoffed the mesne of the tenancy, it should not have altered the advoury of the Lord, &c.

655. If Lord, two joynt tenants mesne, and tenant had beene, and every of them held of the other by fealty, and. rii. And the tenant had enfeoffed one of the joynt tenant, mesnes before the statute of Quia emptores terrarum, of the whole tenancy, it seemeth the feoffee shall hold one moity of the tenancy of him, who was his joynt tenant mesne by fealty, and 6. d. rent: For in as much as his joynt mesne might have granted what belonged unto him of the meanalty unto a stranger, and his grant should have beene good.

5. E. 3. 31.

which

which attornement of the tenant notwithstanding that it were but by matter of writing, And if it were by matter of Record, it should be good without attornment of the tenant, &c. And if the mesne who made the feofment, before the feofment had released all his right in the tenancy unto the tenant, by this release the moity of the menalty had beene extinguished, and no more. So that notwithstanding this release, his joynt Mesne avow upon the tenant, for the moity of the menalty, viz. for fealty and 6.d. So that it appeareth that by the feofment made unto one mesne, There is but a moity of the menalty extinct, viz. the moity which in right doth belong unto the feoffor, and no more, &c. So as for one moity of the tenancy there are Lord, mesne and Tenant; And for the other moity of the Tenancy Lord and Tenant.

656. If before the statute of Quia emptores terrarum, There had beene Father, and two Daughters, and the Father being seised of one acre of Land, enfeoffe therof his eldest daughter to hold of him, and his heirs by fealty and xii. d. and the Father dieth, and the seigniory descendeth unto the two Daughters, Now the eldest Daughter shall hold of her younger sister by fealty and 6.d. But if the eldest Daughter being seised of one Acre of Land before the Statute of Quia Emptores terrarum, had thereof enfeoffed her Father,

Father, to hold of her and her heires by fealty and vi. d. and the Father thereof die seised, and the two Daughters enter into the same acre as Daughters, and one heire unto their Father, In this case the eldest Daughter shall not distrein for any Rent, during the time she is in possession in common with her sister, But after Proclamation is made betweene her, and her sister, her sister shall hold her part of her by Fealty, and iii. d. &c.

28. Ass. 1. 19.

657. If before the Statute of Quia emptores terrarum, Lord and Tenant had beene of a come of Land by Knights service, and the tenant had beene disseised of the Land, and the uncle of the tenant had released all his right, which he had in the moity of the tenancy unto the disseisor, and by the same deed of release had bound him, and his heires to warrant the same moity, unto the disseisee and his heires, and the Uncle dieth without issue, and the warranty discendeth upon the disseisee, And the disseisee taketh a wife, and hath issue a sonne, and the disseisor enfeoffeth the sonne of the tenancy, to hold of him by Knights service and afterwards the Father dieth; Now the sonne is remitted unto the moity of the tenancy, and shall hold the same moity by priority, &c. and the other moity he shal hold by posteriority, &c.

658. If before the Statute of Quia emptores terrarum, A man being seised of one acre

acre of Land leaseth the same acre unto a stranger for life, and afterwards granteth the reversion for unto another stranger, to hold of him and his heires by knights service; this is a good tenure, But the Grantor shall not distreine for the services, during the life of the lesse, &c.

659 And if before the Statute of Quia emptores terrarum, A man seised of one acre of Land leaseth the same acre for life, and afterwards releaseth all his right in the same acre of Land unto the lesse, To have and to hold unto him, and his heires, &c. Or confirmeth the estate of the lesse, to have, and hold the same acre to him, and his heires, to hold of him by knights service, the releasor may distreine for such services, or any of them in the Land whereof the lease, release, or confirmation was made, as often as the same shall be behind, &c.

660. If a man seised of Land in fee in the right of his wife, And before the Statute of Quia emptores terrarum, the Husband alone thereof doth enfeoffe a stranger which out saying more. The feoffee shall hold of the husband by such services, as the husband and his wife held over, for the husband alone did not hold over. But if the husband, and wife had joyned in the feoffment to hold of the husband, these words (to hold of the Husband) are void. And the feoffee shall hold of the Husband and Wife by such services 11.11.6.1.

vices as they held over, in so much that if the Husband dieth, and the Wife after the death of her Husband accept of the services from the feoffee, shee shall not avoid the feofment in a Cui in vita. And if the Husband, and Wife have joyned in the Feofment to hold of the Wife without more saying, the feoffee shall hold of the Husband and Wife, in so much that if the Wife die, the feoffee shall hold of the Husband untill the Feofment be avoyded by the heire of the Wife in a Cui in vita, &c. And then the heire shall hold of the Lord paramount.

P. 10. E. 4. 5. 661. If before the Statute of Quia emptores terrarum, two coparceners were of a come of Land in fee, and one of them release all his right, &c. unto his companion reserving rent, it is a good Reservation, because the release as in the part of his release, en le per by force of the release.

662. But if two joynt tenants were of a come of Land in Fee, and before the Statute of Quia Emptores, &c. one of them release all his right in the Land unto his companion, reserving Rent, the same is a void reservation to make a tenure. But if perhaps such release were by deed indented, and words of grant of release, &c. were compised within the release, or onely words of reservation without words of grant, then the lessor shall have the rent reserved as a rent secke: and if the reservation were with words

words of distresse, then the Releasor shall have it as a rent charge.

663. If Lord and tenant are in fee by fealty, and rii.d. and before the Statute, &c. The Lord release unto the tenant all his right in the tenancy, to hold of him by rr.d. it is a void tenure, because that he departed with no estate executed, nor to be executed hereafter by the release upon which hee created the tenure. 17.E.3.69.

664. If before the Statute of Quia Emptores, &c. A man seised of Land in fee doth thereof enfeoffe a stranger to hold of him and his Wife by rr.d. It is a void tenure as unto the wife, and it is a good tenure for the whole rent as to himselfe, &c. And it is said, The reason is because the Wife is a stranger unto the feoffment: But notwithstanding that the wife were a party to the feoffment, &c. if shee had nothing in the Land whereof the feoffment was made, at the time of the feoffment, yet the tenure is void as unto the Wife, if it were not by fine, because she departeth with no possession nor estate, &c. But it shall be all the feoffment of the Husband: But if the tenure be by fine then it shall be good unto the Wife by way of conclusion, &c. M. 11. H. 4.1.

665. If a man seised of Land, and before the Statute, &c. doe thereof enfeoffe a stranger, to doe homage and fealty unto another stranger, it is nothing worth, for service cannot be done unto any other then the Lord. And yet the Steward

or

or other servant of the Lord may receive
21.E.4. 2. fealty for the Lord, &c. But the fealty is
22.E.6.3. made unto the Lord, notwithstanding
that he be not present.

666 But if before the Statute, &c. A man being seised of Land in fee doe thereof enfeoffe a stranger, to be butler unto another stranger, or to pay unto a stranger 10.s. yearely at the feast of Easter; or to cover the house of another stranger, this is no tenure in him whose house shall be covered or, &c. nor hath he any remedy if the feoffee doe not doe the same, but the feoffee holdeth of the feoffor, and if in such case the rent be not paid, &c. the feoffor may distreine, &c.

17.E.4. 667. If there were Lord, Meane, and
11. tenant, and before the Statute, the tenant
P.2.E.4.5. doth enfeoffe a stranger of the tenancy to hold of the Lord Paramount, the same is void: But if the feoffment were made to hold of the Meane, it were good, and hee shall hold of him by the same services, which the feoffor held of the Meane, But the tenant cannot make a new Tenure betweene his the Meane, and his feoffee by new services, for to the services reserved the Meane is a stranger. And if the tenant had enfeoffed a stranger before the Statute, &c. To hold of him, and the Meane the feoffee should have holden only of his feoffor.

668. And if the Tenant before the Statute had enfeoffed I.S. To hold of the Meane, and T.R. the Feoffee should have holden

holden only of the Mesne. If there had beene a woman seignorelle before the Statute, and tenant, and the woman had taken husband, And the Tenant enfeoffeth a stranger, to hold of the husband, it is a void tenure, and the feoffee shall hold of his feoffor, &c. And if there had beene two joint seignors and tenant, And before the Statute the tenant had enfeoffed a stranger to hold of him, and one of the joynt Lords, it is a void tenure, and the feoffee should hold of his feoffer.

669. If Lord and Tenant had beene before the Statute, &c. And the Lord grant his seignory unto a stranger, and the tenant enfeoffed another stranger, to hold of the grantee of the Lord, the same had amounted unto an attornement and also to make a new tenure, and yet the grantee is a stranger unto the reservation of the seignory betweene the grauntor, and the tenant. But as to that it may be said, that there is a privity by matter in fait, viz. by the grant with the attornement, and so shall be notwithstanding that the Lord had granted the same unto the use of the grantor, &c. And the same Law is where a menalty doth escheate Mutatis mutandis. And if there had beene Lord, and two joynt tenants before the Statute, &c. and they had enfeoffed a stranger, and one of them had assigned the feoffee to hold of the Lord paramount, and the other had assigned the

scoffee to hold of himselfe, &c. the same had beene good, &c.

670. If Lord and Tenant have beene before the Statute, of two acres of Land, And the tenant doe thereof enfeoffe a stranger, to hold one acre of the Lord Paramont, and to hold the other acre of him, the same is good, &c. And it is to know, that the beginning of a manno: was, when the King gave a thousand acres of Lands, o: a greater o: lesser parcell of Land unto one of his subjects, and his heires, to hold of him and his heires, which tenure is Knights service at the least, And the donee did perhaps build a mansion house upon parcell of the same Land, and of 20. acres percell of that which remained, o: of a greater o: lesser parcell before the Statute of Quia Emptores, &c. did enfeoffe a stranger, to hold of him, and his heires, as of the same mansion house, to plow ten acres of arable Land, parcell of that which remained in his possession, and did enfeoffe another of another parcell, &c. to carry his dung unto the Land, &c. And did enfeoffe another of another parcell thereof, &c. To goe with him to warre against the Scots, &c. And so by continuance of time hee made a manno:, &c.

671. And if a man be seised of the manno: of Dale in fee, and an other man hold of him as of his manno: of Dale, to cover the Hall, o: other House of the

same

same manner, if the house fall and be not reedified by the space of 7. yeares, or for a greater or lesser time; Now for this time the tenant which held by such service is discharged; But when such house is reedified, The tenant is bound to doe the service, if it be not rebuilded longer or larger, so as it shall be more chargable unto the tenant, for to cover the house now, then it was at the time the tenure was created: And if the house be in such manner reedified, Quere if the tenant shall be bounden to cover so much thereof as shall amount unto the length, and breadth what it was when the tenure was created. And if such a House bee throwne down by the Turkes, enemies unto the King, who enter into the Realm with a great Army, for to conquer the same; the Law is as before is said, Mutatis mutandis &c.

672. But if such a house bee pulled down by neighbours, or by the other men; Or if such a house be burned by negligent keeping of the Neighbours fire, in such case he is not bounden to cover the same when it is builded againe, for the Lord shall recover damages for the same house, unto the value of the house, as it was at the time of the burning, or at the time of the pulling downe thereof, so that the tenant is not bound to make another covering to the same house, then he is to make unto another house burnt, or pulled downe, for if hee should be otherwise

28. E. 3. 7.

bounden then the Lord should have double satisfaction for the same thing, &c. Quære if such a house fall by the negligence of the Lord himselfe, or with his will, and afterwards be re-edified, whether and how the tenant shall be bounden to cover the same house, &c.

673. If a man be seised of the manor of Dale in fee, and a stranger holdeth of him as of his manor of Dale, to cover the Kitchin of the same manor, or other house, Or elce hee holdeth of him as of the same manor to scowre a ditch of the same manor, Or if he hold of him as of the same manor by Knights service, or in socage, in such case, if before the statute, &c. a stranger bee enseoffed of the manor, and the tenants attorne unto him, hee may avow for all such services: But for such services, viz. for the scouring of a ditch, or for the covering of a house, notwithstanding that he be seised of them, and he distreine for them, and reservations be made, hee shall not have an assise, because they lie only in feasance, but hee may have of them a Præcipe quod faciat, &c.

674. And if before the said Statute, Lord and Tenant have borne of two acres of Land by fealtie, and xii d. Rent, and the tenant had enseoffed a Stranger, of one acre, or of a greater, or lesser part of the tenancy, it was at the liberty of the Lord in what parcel he would distreine for the whole Rent, for by such feoffment

Mar. E. 4. 16.

mat-

made unto a stranger, the Rent was not apportionable by the common Law notwithstanding that the feoffee held of his feoffor: But now by the statute the feoffee shall hold pro particula illa of the Lord of the feoffor.

975. But if the Tenant leaseth parcell of the same for yeares, or for life, or giveth parcell of the tenancy in frankemarriage, or in taile, In that case the Lord Peramount may distraine for all his Rent in every parcell of the tenancy. And the lessee, or donee, is put unto his remedy against his lessor or donor, or him in the reversion. And the reason is, because such lessee or donee doth not hold of the Lord Peramount, &c.

976. If there be Lord and tenant by fealty, and rii. d. and the tenant at this day doth enfeoffe a stranger of the moity of the tenancy, in this case it seemeth unto some, that the rent shall not be apportiond, for these words Per particula illa, shall be intended where the feofment is made of one acre of the tenancy in severalty, or of a greater or lesser part of the tenancy in severalty, Tamen Quære.

977. And if there be Lord and two joint tenants, and one of them alieneth that which belongeth unto him, It seemeth unto them That the Rent shall not be apportioned: But if coperceners make partition, the same shall bee taken by equity, and that before the Statute, so that in that case the rent shall be apor-

T. 22. E. 4. 16.

tioned. The same Law is, if the Lord exchange parcell of the tenancy in severalty in fee. If the tenant doth enfeoffe the Lord of the moity of the tenancy in severalty the rent is not apportionable by this Statute, but it is apportionable by the Common Law, if the Rent be severable.

678. And if before the Statute, the villeine of the Lord had purchased parcell of the tenancy, and the Lord had entred, &c. Or if the Lord had recovered parcell of the tenancy by false oath, or upon a false title, &c. the Rent was apportionable at the Common Law, if it were severable. And if after the Statute two coparceners were of the tenancy, and they had made partition, the rent was apportionable if it were a rent severable.

679. But by force of these words, Per particula illa. A menalty shall not at this day be apportioned, as put case, there be Lord, two joynt mesnes and tenant, of one acre of Land by fealtie, and rent. The Rent, and one grant that belongeth unto him of the menalty in fee unto a stranger, and the tenant doth attorne unto the Grantee, the menalty shall not be apportioned, for the words Per particula illa, are intended of the ter. tenant, &c.

680. And the said Statute of Quia Emptores terrarum saith secundum quantitatem terræ that shall be intended the value of the Land, and not the quantity, as perhaps one acre is worth more then another

nother acre by reason of a mine or otherwise, it shal be apportioned according to the value, &c. And if after the apportionment a house built upon the Land fall down, yet it shall bee holden as it was apportioned, &c. So is it if parcell of the Land which is apportioned, be surrounded by tempest. Quere if it be drowned by the Sea in such manner that it cannot be regained by any meanes.

681. And if there be Lord and tenant of two houses by fealty, and 2. s. Rent, and the tenant after the Statute doth enfeoffe a Stranger of one of the Houses, & the rent is apportioned, and afterwards the house doth fall, or is burnt, yet the rent remaineth, and the Lord may distrein for the same upon the Land, where the house stood, &c. 7. E. 4. 21. Per Danby.

682. And perhaps a Rent shall bee apportioned, for a time. As perhaps there be Lord, and a woman tenant by Rent seurable: and the woman taketh a husband, and the husband doth distreine parcell of the tenancy in severalty in fee, and the Rent is apportioned, and the husband dieth, and the wife doth recontinue this parcell, which was discontinued by her husband in a Cui in vita, brought against the feoffee, Now this apportionment is defeated, and determined, &c. The same Law is of a feofment of parcell of the tenancy made upon condition, &c. Mutatis mutandis, &c.

683. So shall it bee of parcell of the

tenancy in severalty be recovered by erronicus processes, or by false verdict, or upon a false title, &c. and afterwards is recontinued, &c. The Statute saith that the feoffee shall hold now of the Lord, and if it bee of part, then of that part, Et decidat Capitali Domino ipsa pars servicii &c.

M. 22. E. 3. 36. 684. If there be Lord and Tenant of three acres of Land by homage, fealty, suit of Court, Escuage, and the Rent of a horse payable at the feast of Easter, or by the rent of a Hawke, or of a Rose, &c. And the Tenant after the Statute doth enfeoffe one man of one acre parcell of the tenancy, and doth enfeoffe another man of another acre parcell of the tenancy, in this case every of them shall hold of the Lord, by homage, fealty, and suit, but the escuage shall be apportioned, and the reliefe when it falleth as a Rent severable shall be apportioned, and the Lord shall have but one horse, or one rose, or one Hawke of them all not apportionable: And he shal make one avoinzy upon them all for such entire Rent, although that the Lands be severable, as hee may make at the Common Law for such entire rent, &c. And notwithstanding that by the said Statute the feoffee of parcell of the tenancy in severalty, shall hold of the Lord, Per particula illa, yet before the Lord is bounden to avowe upon him, he ought to give notice unto the Lord; and yet in right he holdeth of the Lord immediatly,

21 E 3 24

and

And the Lord shal have ward or reliefe, or a Cessavit, or assise of the rent before notice given unto him. But the feoffee shall not have acquitall before notice, &c. the notice ought to be given in this manner, viz. To shew the feofment unto the Lord, and if the tenure be by homage, to tender unto him homage and fealty, and all the arrerages of the rent, &c. otherwise the Lord is not bounden to take the notice, for the feoffor shall not be discharged before the arrerages paid, and the feoffee of parcell ought to tender all the arrerages, &c. And if there be two joynt feoffees it behoveth them to give their notice joyntly. An enfant who is a feoffee shall give notice, and an enfant who is Lord shall take notice, &c.

7. E. 4. 27. P. 4. E. 3. 22.

T. 37. E. 3. 4.

685. And the Husband who is seised of a seignory in the right of his wife, if the tenure be by homage, he and his wife shall take the notice: But if the tenure be but by fealty, and Rent, the husband alone may take the notice: But if a sole woman bee enfeoffed of parcell of the tenancy, and before notice she taketh a husband, in such case the husband, and the wife ought to give the notice joyntly. And an Abbot who is feoffee of a tenancy shall give notice, &c. But hee who hath the whole tenancy, or parcell of the same in severalty by matter of record, as by recovery, or by fine, shall not give notice, &c. For the Lord is bound to take notice thereof, &c.

686. But

686. But if a fine be levied Surso nusans de droit of a tenancy, and the conusor be in possession of the tenancy, it is at the liberty of the Lord, whom hee will take for his tenant before the conusee enter, &c. But it is to know if at this day a tenure shall be made by void reservation, it behoveth, that the reversion of the same thing, out of which the reservation is made, and of the estate which is made, remaine in him which maketh the reservation; if not, that it be in speciall cases, &c.

687. And therefore if there be two joint tenants of Land, to have and to hold the same Land unto them, and unto the heires of one of them, and they joyne in a guift in taile unto a stranger reserving rent unto him who had but an estate for life, this reservation is void to make a tenure. For notwithstanding that if the donee in taile dieth, without issue, during his life, and the life of his joynt donor, that then hee shall have the Land againe; yet that doth not prove that any reversion of the same Land after the guift made, remaineth in him who had but an estate for life at the time of the gift: For if at this day a man seised of Land doe enfeoffe thereof a stranger by deed indented, reserving unto him, and unto his heires, r.s. Rent payable, &c. upon condition, That if the feoffor pay unto the feoffee 10.l. &c. That then it shall be lawfull unto the feoffor, and his heires

38.E.3.7.

heires to reenter. In this case, the feoffor may have againe the Land, and yet the reservation is void to make a tenure, &c.

688. But because it is by deed indented, the feoffor shall have the rent reserved as a rent seck, and to this purpose it shall take effect in the feoffor as a grantee of the feoffee, in so much as if it be reserved with clause of distress, the feoffor shall have it as a rent chardge. So it appeareth that when two ioynt tenants of Land, and unto the heires of one of them ioyne in an estate in taile, that nothing of the reversion of the same Land doth remaine in him who had but an estate for life, &c. And yet if lessee for life be of Land, and he maketh a guift thereof in taile unto a stranger reserving rent, &c. that this reservation maketh a tenure betwixt him, and the donee, &c. as long as the gift continues in force, because that by the guift he hath gained unto himselfe a reversion in fee, in the same Land whereof the guift was made, &c.

11. E. 3. parts 60. 14 Ass. p. 14.

689. But put case, If two or three ioynt tenants are of Land, to have and to hold unto the heires of one of them, and they ioyne in a gift in taile without saying more, the donee shall hold of them by the like services, as they hold over: But if they have reserved new services unto them all upon the guift, Quere how the same shall enure, &c.

690. If there be disseisor, and disseisee of

of any acre of Land, and they both enter into the ſame acre, and deliver an eſtate thereof unto a ſtranger in tayle, to hold of the diſſeiſee, and his heires by homage fealty and eſcuage, this is a good tenure, becauſe the diſſeiſee is the donor, and the reverſion doth remaine in him, becauſe he was remitted before the livery of ſeiſin made unto the donee in taile, &c. But if they had given it in taile to hold of the diſſeiſor. it is a void tenure, and then the donee ſhall hold of the diſſeiſee by the like ſervices as he held over. Cauſa patet.

691. If a man ſeiſed of one acre of Land in fee, leaſeth the ſame unto a ſtranger for yeares, and the leſſor and leſſee joyne in a guift in taile unto a ſtranger, reſerving 20 unto the leſſor, the ſame is a good tenure: But if leſſee for life of one acre of Land joyne in a guift in taile of the ſame acre, with his leſſor unto a ſtranger by deed, containing words of confirmation to hold of the leſſor by 10. s rent. Quere thereof: If Ceſtui que uſe of Lands entreth upon the feoffees, and leaſeth the ſame Land unto a ſtranger for life, according unto the Statute of 1. R. 3 reſerving 10. s. Rent, the ſame is a void reſervation to make a tenure, for the reverſion of the ſame Land is not in the leſſor, but it is in the feoffees, and they are ſtrangers unto the leaſe, and the reſervation, &c. But if ſuch leaſe, and reſervation be by deed indented, then the

M. 5. H. 7. 5
H. 8. H. 7. 5
T. 15. H. 7. 25.
T. 27. H. 8. 23.

the lessor shall have the rent, as a rent seck.

692. If Cestui que use, hath leased the Land in use for terme of yeares, reserving rent, &c. by word, In such case the lessor shall not distreine for the rent reserved because no reversion doth remaine in him, &c. But it is said. That he may have an action of debt for the rent against the lessee, because it is but as a contract. As if a man sell Lands or Tenements for money by word, hee may have an action of debt for the money, &c. And it hath beene holden, that in such case the lessor shall not have an action of debt for the Rent reserved, unlesse it by deede indented, and the reason as it seemeth is, because it cannot be taken as a contract, because it is by reservation: And then if the lessor take advantage thereof it behoveth him to have it as a rent seck: and then it ought to take effect in the lessor, as a grant of the lessee, and rent cannot take effect in any person by way of grant by word, if not that it be in case of partition, &c. and other speciall cases, &c. Tamen quære, for such leases are commonly made with reservations by Cestui que use, by word, &c.

693. If there be lessee for 20 yeares of Lands or tenements, and he granteth the same Lands or tenements unto a stranger for parcell of the yeares, reserving unto him 20. s. &c. In this case the grantor shall destreine for the rent reserved,

forbed, or have an action of debt at his pleasure, and the reason is because by common intendment hee is to have the same Land, after the yeares determined, because hee hath granted unto him, but parcell of the yeares, so as the remainer of the yeares are in him.

F.10.E.4. 694. If there be disseisor, and disseisee of one acre of Land, and the disseisee doth release all his right in the same acre unto the disseisor, to have and to hold the same acre unto him, and his heires of his body, reserving unto him, and his heires r.s. Rent payeable, &c. it is a void reservation to make a tenure at this day, for notwithstanding that such release doth goe by way of making of an estate, yet the fee of the Land, which is in the disseisor, shall not be devested out of him, by such release, if the release be not by deed intended, and if it be, then Quere thereof. For then it seemeth that the releasor shall have the reversion of the fee by conclusion. But if there be two joynt disseisors, and the disseisee doth release unto one of them, hee shall hold out his companion, &c.

7.E.4.25.

695. If there be Lord, and tenant of Land by fealty, and rid. d. and the tenant leaseth the tenancy unto a stranger for life without any more saying, In this case the lesse shall hold of his lessor by fealty onely, and not by the services by which his lessor holdeth over: But if the lessor hath reserved any service, or

Rent

Rent upon the lease, hee shall have the same: But if at this day nothing be reserved upon a gift in taile, The donee shall hold of the donor by such services as hee holdeth over. As if a man seised of Land in fee, leaseth the same Land for life reserving 10. s. and the lessee giveth the same Land unto a stranger in taile, and doth not reserve any thing upon the guift in taile, quære, How the donee shall hold the same, &c.

696. Now is to shew. What things may be reserved for to make a tenure. And as to that. Know. That all such things as lie in feasance, or in tenure, may bee reserved for to make a tenure, for such things may be said Rents, or Services. As if before the Statute of Quia Emptores terrarum, A man seised of Land doe enfeoffe thereof a Stranger, to hold of him and his heires to scoure the ditch of the froffor, &c. Or to cover his Hall or to repaire his Kitchin, or to give unto the feoffor, and his heires when hee shall come unto his manor of Dale a dinner. Or to finde a Chapline every Friday in the weeke yearly in his manor of Dale &c. Or to give unto the feoffor 10. s. Rent, or a horse, or grasse, or arrowes, or a speare, or a lavvnce, or a Cup of silver or a paire of spurres, or a ring of gold or silver, &c. Or a quarter of wheat, or of barly, &c. Of all the things aforesaid a tenure may be made by way of reservation. Or of all other things which bee in feasance

ferred, or have an action of debt at his pleasure, and the reason is because by common intendment hee is to have the same Land, after the yeares determined, because hee hath granted unto him, but parcell of the yeares, so as the remainder of the yeares are in him.

P.10.E.4. 694. If there be disseisor, and disseisee of one acre of Land, and the disseisee doth release all his right in the same acre unto the disseisor, to have and to hold the same acre unto him, and his heires of his body, reserving unto him, and his heires r.s. Rent payable, &c. it is a void reservation to make a tenure at this day, for notwithstanding that such release doth goe by way of making of an estate, yet the fee of the Land, which is in the disseisor, shall not be devested out of him, by such release, if the release be not by deed intended, and if it be, then Quere thereof. For then it seemeth that the releasor shall have the reversion of the fee by conclusion. But if there be two ioynt disseisors, and the disseisee doth release unto one of them, hee shall hold out his companion, &c.

7.E.4.25.

695. If there be Lord, and tenant of Land by fealty, and rit. d. and the tenant leaseth the tenancy unto a stranger for life without any more saying, In this case the lessee shall hold of his lessor by fealty onely, and not by the services by which his lessor holdeth over: But if the lessor hath reserved any service, or

Rent

Rent upon the leafe, hee ſhall have the ſame: But if at this day nothing be reſerved upon a gift in taile, The donee ſhall hold of the donor by ſuch ſervices as hee holdeth over. As if a man ſeiſed of Land in fee, leaſeth the ſame Land for life reſerving 10. s. and the leſſee giveth the ſame Land unto a ſtranger in taile, and doth not reſerve any thing upon the guift in taile, quære, How the donee ſhall hold the ſame, &c.

696. Now is to ſhew. What things may be reſerved for to make a tenure. And as to that. Know. That all ſuch things as lie in feaſance, or in tenure, may bee reſerved for to make a tenure, for ſuch things may be ſaid Rents, or Services. As if before the Statute of Quia Emptores terrarum, A man ſeiſed of Land doe enfeoffe thereof a ſtranger, to hold of him and his heires to ſcoure the ditch of the feoffor, &c. Or to cover his Hall or to repaire his Kitchin, or to give unto the feoffor, and his heires when hee ſhall come unto his manor of Dale a dinner. Or to finde a Chapline every Friday in the weeke yearly in his manor of Dale &c. Or to give unto the feoffor 10. s. Rent, or a horſe, or graſſe, or arrowes, or a ſpeare, or a lavvnce, or a Cup of ſilver or a paire of ſpurres, or a ring of gold or ſilver, &c. Or a quarter of wheat, or of barly, &c. Of all the things aforeſaid a tenure may be made by way of reſervation. Or of all other things which bee in feaſance

sance or in render a tenure may be made by reservation upon a feoffment, &c. And at this day a tenure may be by reservation of such things, upon a guift in taile, or upon a lease for life, &c.

697. And it is to know that when the Law maketh the tenure or reservation, Then the heires of the feoffor, donor, or lessor shall have the services aswell as the feoffor, donor, or lessor himselfe shall have them: But if the reservation of the service or rent, &c. be made by expresse words of the party. &c. Then the heires of the feoffor, donor or lessor shall not have the services, and Rent reserved, if not that it be reserved unto them by expresse words, &c.

M. 10. E. 4. 18.

698. And therefore, if before the Statute of Quia Emptores terrarum, There be Lord and tenant of Land and tenements by Knights service, and the tenant doth enfeoffe a stranger of the tenancy without reserving any thing, the feoffee and his heires shall hold of the feoffor, and his heires by Knights service, if the feoffor, and his heires hold over by the like services: But if the feoffor himselfe holdeth over by Knights service, during his life, and no longer, and that after his death his heires shall hold by fealty only, or by other services, Now the feoffee and his heires shall hold of the feoffor, and his heires by the like services, Mutatis mutandis, and so shall it be if the tenant at this day doth give the tenancy in taile

taile without reserving any thing. Mutatis mutandis, &c.

699. But if the feoffor, &c. or donor, &c. Or lessor for life reserve unto him upon the feofment before the said Statute: Or reserve unto him upon the guift or lease, after the said Statute, Knights service, or fealty and 10. s. or a Horse, &c. and dieth: his heire shall have only fealty because the reservation doth not extend unto the heire of the feoffor, donor or lessor. But if in the same Case the feoffor, donor, or lessor grant his seignory or reversion, &c. And the tenant doth attorne unto the grantee: The grantee shall have all the services, and the Rent reserved, &c. during the life of the grantor &c. 26. Ass. p. 38.

700. And if a man seised of two acres leaseth the same unto a stranger for life, yeelding for one acre, and sheweth which acre in certaine, 10, s. unto the lessor, and his heires, and yeelding for the other acre 10. s. &c. unto the lessor, and the lessor dieth, and the reversion of both acres doe descend unto his heire, the heire shall not have the 10. s. last reserved unto the lessor, &c. P. 11. h. 3. Ass. 86.

701. And if a man seised of Land after the Statute of Quia emptores terrarũ, giveth the same Land unto a stranger, pro homagio & servicio suo: To have and to hold the same acre unto him, and his heires of his body begotten, in this case the issue of the donee shall doe fealty onely unto the donor, and his heires; And the

heires of the donor shall have onely fealty of the donee, and his heires, &c.

702. And it is to know that a reservation of things which lie onely in prender or usage, cannot make a tenure. And therefore if a man seised of Land, and wood, before the Statute of Quia emptores terrarum, doth thereof enfeoffe a stranger, and after the said Statute doth give the same Land, and wood in taile, or leaseth the same for life unto a stranger, reserving unto the feoffor, donor, or lessor common for 4. beasts in the same Land, or for to suffer the feoffor, donor, or lessor to take yearely in the same wood three Loads of cartbers for fewell, this reservation is void to make any tenure, and the reason why such things cannot be said a reservation is, because that the feoffor donor or lessor cannot take profit thereof but only by his owne act, and a man cannot doe service unto himselfe: And therefore such reservation is void, if it be not by deede indented, and then he shall take the same by way of grant of the feoffee, donee, or lessee.

703. And therefore if a man seised of Land, doe enfeoffe a stranger thereof by deed indented, or giveth the same Land in taile, or leaseth the same for life unto a stranger by deed indented, reserving common without number unto him, and his heires, this is a good grant in fee-simple if it be reserved upon a feoffment: But if it be reserved upon a guift in taile, then it

it shall ennure and take effect by way of grant of the donee, and shall be good and effectuall during the life of the donee, and no longer, &c. The same Law is, if it be reserved upon a lease for life by deede indented, &c.

704. And it is to know, that the donor, grantor or lessor, cannot reserve unto them a lesser estate in the same thing in which they depart withall by the gift, &c. then they had in the same at the time of the guift, &c. by matter in deed or writting. Quære, if it be by writing indented, &c.

705. But if such reservation be by fine, it shall be good by way of conclusion, &c. And therefore if a man seised of Land in fee, giveth the same Land in fee, or giveth the same Land in taile unto a stranger, or leaseth the same Land unto a stranger for life, the remainder thereof unto the donor or lessor for life, or in taile, the remainder over unto a stranger in fee: In this case the remainder unto the donor, or lessor is void, and yet the remainder over unto the stranger is good, &c. The same Law shall be, if the donor or lessor had not had but an estate for yeares, or for life in the Land given, or leased, &c. At the time of the guift or lease with the remainder over, in manner and form as before is said, for when lesse for yeares or for life maketh such a guift or lease, &c. They which take by such guift or lease cannot disable their donor or lessor to make such a guift, or lease unto

them, and so it doth not lie in them to plead that their donor, or lessor had not a fee at the time of the gift or lease made, &c. But notwithstanding such gift or lease made by lesse for yeares, or for life, hee or they who hath or have right may avoid the same by entrie, or by action, as their case is, &c.

706. If husband and wife, and a third person be joint tenants of Land or tenements in fee, and lease the same Lands, and Tenements by deed poll unto a stranger for life saving the reversion unto them three, and unto the heires of the husband, notwithstanding that, The reservation shall bee unto them all three joyntly in fee. The same Law is of things which lie in grant, Mutatis Mutandis, if not that it be in speciall cases: But if such reservations were made by fine, they were good enough if not that it be in speciall cases, &c.

CHAPTER II.

CHAPTER 11th.

Conditions.

707 NOw is to speak of conditions, And first it is to know that conditions may be annexed unto things enheritables: unto freeholds, and unto chattells realls and personalls: unto things inheritables and freeholds. As put case. A feoffment or a gift in tayle, or a lease for life, or the life of another, be made of Lands or Tenements upon Condition, Or if a grant of a Rent or Common, &c. be made in fee tayle, or for life, or for anothers life upon condition, &c. Unto chattells reall: As a man seised of Land leaseth the same Land by indenture, unto a stranger for the Terme of five yeares upon condition, that if the lessee pay unto the lessor within the two first yeares ten markes, that then hee shall have fee in the Land let, or otherwise but an estate for five yeares, and livery of seisin is made according unto the deed, in this case it hath beene holden that the lessee hath a fee simple conditional! presently, which it cannot be, because that the words of the condition are Verba de futuro viz. That if he pay, &c. that then he shall have fee.

708. And therefore if a man seised of

Land in fee, doth lease the same unto a stranger for yeares, upon condition, that if the lessee be ousted of the Land within the Terme by his lessor, that then he shall have fee, &c. Now if the lessee within the Terme be put out by a stranger, without the assent of the lessor, the lessor shall have an assise of this ouster, and not the lessee, for in such case the freehold did not accrue unto the lessee, but when the condition is performed, and at all times before the condition performed the freehold doth remaine in the lessor. And yet if a man seised of Land, doth lease the same Land unto a stranger for life, and doth grant the remainder over of the same Lands unto the right heires of I. S. which I. S. is then alive, in that case, the fee is in abeyance, viz. in the Consideration of the Law, and is in no person certaine, and the reason is in that case because the remainder is granted by words in the present tence, and also
9.H.6. 29. in this case the freehold is not to be put
2.H.7. 3. in abeyance: and in the principall case if
T.12.H.7. the freehold and the fee, &c. should not be in
27. the lessor, &c. untill the condition be performed, then would it follow that the heire of a disseisor by his act shall put the disseissee unto his action, And all other persons who have right unto Lands or Tenements, by such meanes, the tenant of the freehold by his owne act might put them unto their actions: for the writ of Entre en le per, and such other actions ought

ought to be brought and pursued against the tenant of the freehold, &c.

709. But if a parson of a Church be seised of Glebe Land in the right of his Parsonage, or Vicarage, unto which Land a stranger hath right of action, and the Parson or Vicar dieth. In this time during the time of the vacancy of the Church, he that hath right of action, shall use or follow his action, because that during the vacancy the freehold is in no person, &c. The same Law is, as it seemeth, if such a parson, or Vicar, doth resigne his Benefice into the hands of the Ordinary, in this case during the time of the vacancy. Nor he who hath right of action unto the Glebe Land cannot commence his action, &c. and yet the Church doth become void by the act of the incumbent, &c. But that is a speciall case, and the same Law shall bee of the like speciall cases, &c.

710. If a man seised of Land indenture doth lease the same Land by indenture unto a stranger, yeelding 5. l. by the yeere, and the indenture is, that if the lessee will hold over ten yeeres to him, and his heires, that he shall pay 20. l. by the yeare, and livery of seisin is made unto the lessee accordingly. In this case for the rent behind within the ten yeares, The lessor shall have an action of debt, which proveth that the freehold, and the state are not in the lessee before the ten years ended. But if when the ten yeares be past,

paſt, and ended, the leſſee doth continue the poſſeſſion of the ſame Land, and doth occupy the Land by force of the indenture then he hath for, and ſhall pay 20. l. by the yeare as a rent ſeck.

M. 40. E. 3. 27. 711. But if a man ſeiſed of Lands doth leaſe the ſame Lands for life, reſerving unto him a Roſe for the firſt ſix yeares, and if hee will hold the Land over the ſix yeares, that hee ſhall pay three markes by the yeare, in this caſe the leſſe hath the freehold preſently, &c. And Gardien in Knights ſervice may grant the wardſhip of the body and Land, or any of them, upon condition. Tenant by Statute merchant, and tenant by elegit may grant their Eſtates, or parcell thereof upon condition, &c.

712. And Conditions may be annexed unto chattells perſonalls. And therefore if a man ſelleth 20 Oxen, or other chattells moveables or not moveables upon condition, that if the ſeller goe unto Rome within one yeare then next following, that the vendee ſhall pay unto him for the Oxen, or other chattells 20. l. Or otherwiſe that hee ſhall pay unto him but 40. s. for the Oxen, &c. this is good, &c. and the vendor ſhall not have the 20. l. &c. if he doe not performe the condition, &c. And a man may baile goods upon condition, &c.

713. As if a man contract with a Phiſitian, or with a Surgion, that if he ſhall cure ſuch a one, and name him certeine.

of

of such a disease, and name the disease, that he shall have 10.l. the same is a good contract conditionall. If a man sell a house without the Land upon the which the house is built for 20.l to be paid when the vendor hath removed the house unto such a place at his owne costs, and name the place, &c. The vender shall not have the money before that hee hath removed the house, according unto the condition, &c. M.44.E.3.28.

714. And the retainer of a servant may be upon condition, &c. And know that M. Litleton in his third booke, Chapter of Estates, hath shewed, what Conditions ought to be by deed, and what may be without deed, &c. And in the same Chapter he hath shewed diverse, & many other good, and necessary cases concerning Conditions, &c.

615. And it is to know, that charters, concerning inheritances may be delivered upon condition without deed, and yet they are not Chattells: The retainer of a servant according unto the statute of Laborers upon condition is good without deed, &c. But a rent cannot be granted for yeares upon condition, without an indenture, if the grantor will take advantage of the condition, &c. The same law is of an advowson in grosse, common in grosse, and of the things which cannot passe without deed, &c.

616. It hath beene holden, that if a man doth enseoffe a stranger of Land, and M.6.H.7.8 M.4.E.4.34.

and tenements, to reinfeoffe him, and his heires, & the feoffer dieth, & his heire doth require the feoffee for to reinfeoffe him, and he refuseth, for which the heire entreth, and the feoffee doth bring an action of trespas, that the heire shall plead this feofment with the condition without shewing the deed thereof, because it is in an action of trespas in which action freehold is to be recovered; But the law is contrary at this day, for if in an action of trespas for breaking of his close, &c. the defendant plead, that the place where, &c. was his freehold at the time. Now if the plaintiffe wil conclude him is to plead, by reason of the feofment of the ancestor of the defendant (whose heire he is) with warranty, &c. and relie upon the warranty, it behoveth him for to shew the deed thereof notwithstanding that it be in an action of trespas, &c. But in many cases, diverse persons unto whom a deed doth not appertaine shall take advantage of a condition, annexed unto the freehold, and also of things which lie in grant without shewing the deed: And therefore a woman may demand her dower of a Rent charge, or of a common in grosse which is certaine, and without shewing the deed thereof, &c.

M 7 H. 6 2. — T 44 E. 3 22. — 3 H. 6. 21. — 44 E. 3. 27.

717. Now is to shew at what time Conditions ought to be annexed unto inheritances freeholds or other things to avoid and defeate the same. And as to that know, That when a thing executed shall be

be defeated, and made void by a condition, it behoveth that the condition be annexed unto the same thing, at the time of the Executing thereof, otherwise as unto that purpose, it is not any thing worth. But it is otherwise of things precutory, if not that it bee in speciall cases, &c.

718. And therefore if there be a disseisor of one acre of Land, and the disseisee doth release unto the disseisor all his right by deed (as hee ought) and afterwards it is covenanted betweene them by Indenture, that if the disseisee pay unto the disseisor 4.l. before the feast of Easter then next following, that then the release shall be void, and of no effect, &c. And the disseisee doth pay the money according to the Indenture yet the release is good, and effectuall, and shall not be avoided by such covenant or condition, &c. because the release taketh effect before the condition or covenant doth begin. But it seemeth that by the payment of the money, &c. the disseisor is seised unto the use of the disseisee, &c. Tamen quære, But if such Indentures, and releases had beene first delivered as the deeds of the parties simul & semel, then such condition or covenant is good to avoid the release, &c. And so shall it be, if such condition had beene contained within the release, if the release be by deed indented. The same Law is of a release which goeth, and doth enure by way of enlardging of an

34. Ass. 1.
17. Ass. p. 2.
43. Ass. p. 12.

H 17. E. 3. 2

an eſtate, and of a releaſe which doth enure by way of extinguiſhment of a rent or common, &c. or to determine a title of entry, And of feoffments, gifts, grants, leaſes, confirmations, &c. And of ſales, 21 H. 7 24. contracts, bargaines, and retainers, &c. Mutatis mutandis: But otherwiſe it is of things executories, if not that it be in ſpeciall caſes, &c.

719. And therefore if a man doth enfeoffe a ſtranger of certaine Land and Tenements with warranty, and afterwards the feoffee doth grant unto the feoffor by deed, that if hee be impleaded of the ſame Land, &c. That then hee will not vouch him by force of the ſame warranty, this is a good grant, becauſe the voucher is executory.

720. If I be diſſeiſed of one acre of 7 H. 4 43. Land, and my collaterall anceſtor doth releaſe unto the diſſeiſor with warranty, & dieth without iſſue, and the warranty doth deſcend upon mee, and afterwards the diſſeiſor doth grant unto mee by deed, that if he be impleaded that hee will not helpe himſelfe, nor take advantage by way of plea of this releaſe, nor of the warranty contained therein, the ſame is a good grant, becauſe it is made of a thing executory, &c.

721. And if a man ſeiſed of Lands and Tenements doth leaſe the ſame Lands, &c. Unto a ſtranger for life, in this caſe the leſſee is punishable for waſt: But if the leſſor after the leaſe by a deed doe grant

grant unto the lessee that hee shall not be punished for waste, it is a good grant, because it is made of a thing executory: it appeareth how. The same law in all like cases, &c. 9 H. 6. 5. 20 H. 7. 31. 42 E. 3. 24.

722. Now there are two manner of Conditions, that is to say, Conditions in deed, and Conditions in Law. Of which Master Littleton hath spoken in his third booke, in the Chapter of Estates, &c. But it is to know, That there are three manner of Conditions in fait, which are not good, viz. Conditions against the Law, Conditions repugnants, and Conditions impossible. And know that of Estates made upon Conditions against the Law, the estates are good, and the Conditions are void; if the estates doe not commence by the Conditions, for then both are void, viz. the estates, and also the Conditions, if not that it be in speciall cases, &c. 1 E. 4. 16. H. 4. H. 7. 4

723. And therefore if a man seised of Land doe thereof enfeoffe a stranger, &c. or thereof doth make a guift in taile, or maketh a lease thereof unto a stranger, upon condition, that if the feoffor, donor, or lessor kill I. S. who is an enemy unto our Lord the King, that then it shall be lawfull for him to reenter; the condition is void, and the estate is good. The same Law is of a rent, common, and other things which lie in grant, &c.

724. If a feoffment, guift, grant, lease, &c. be made upon condition that if the

the feoffor, donor, or grantor, or lessor be
the houses of T. K. that it shall be lawful
for him to reenter, &c.

725. The same Law is if such condi-
tion be to be performed on the part of
the feoffee, donee, grantee, or lessee; &c.
But if a lease for life, or yeares be made
of Land upon condition, That if the
lessee kill I.S within the Terme, then he
shall have and hold the Land leased unto
him, and his heires for ever; Now not-
withstanding that the lessee doe kill I.S
within the terme yet his estate is not en-
larged thereby, because that the condi-
tion is against the Law, and the estate
doth begin to be enlarged upon the per-
formance of the condition; But notwith-
standing such condition yet the lease is
good, because the same doth not begin
by the condition, &c. But if an obligation
be endorced expressly with such a condi-
on against the Law, the Obligation and
also the Condition are void.

H. 1. H. 7. 4. 8. E. 4. 13. P. 2. E. 4. 5.

726. As if a man be bounden that he
will keepe the Obligee without dam-
age, and doth not shew in what thing
such condition is void, because hee may
have damage by doing of treason, mur-
der, or felony, &c. which are things a-
gainst the Law, and also it is against
the Law to keepe a man from damage
for such things, and so the condition is
void. But the Obligation is void, because
that such things are not expressly en-
hersed within the condition, and so it

9 Hen. 1. Condition. 6.

cannot

cannot be expressely said, that the will of the obligee was that the obligor should save him harmelesse for such acts done against the Law.

727. And it is to know. That if a gift in taile be made of Land, &c. upon condition, that the donee shall discontinue the same Land, &c. It is a void condition because it is against the Statute of West. 2. Cap. 1. De donis conditionalibus, &c.

728. If a feofment be made unto I.S. of Land upon condition that hee shall enfeoffe thereof the Abbot of Westminster, the condition is good because that the feoffee may performe by the leave of the King, and of the Lord of whom the Land is holden. Notwithstanding that the condition is Prima facie against the Statute of Mortmaine, &c. At it is said that if a gift in taile be made upon condition, that the donee may alien for the profit of his issue, that this is a good condition, notwithstanding the Satute of West. 2. Cap. 1. De donis, &c because that the Statute was made unto the benefit of the issue of the donee, and this condition is for the benefit of the issue in taile, &c.

H. 46. E. 3. 4.

H. 8. H. 6. 24

729. If a lease for yeares be made upon condition, that if the lessor doe alien the reversion within the terme that the lessee shall have fee, and the lessor doth grant the reversion in fee unto a stranger by fine, the lessee shall not have fee by this condition, for the freehold, and the fee

F. R. 2. con. 1.

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is in the conuſee lawfull before the leſſee can take it by the condition, Tamen Quære, if the leſſor had granted the reuerſion unto a ſtranger by fine for life, whether the leſſee by force of the condition ſhall haue ſe, which is dependant upon the ſame eſtate for life, And it ſeemeth to ſome that he ſhall haue it, becauſe that when the leſſor hath granted the reuerſion unto a ſtranger for life, hee hath aliened it. And it ſeemeth to ſome that the leſſee ſhall not haue ſe, which is dependant upon the eſtate for life by ſuch grant, for they ſay that the condition ſhall be intended of an alienation made of the whole reuerſion which was in the leſſor, &c. Ideo quære.

730. But if the condition were, that if the leſſor grant the reuerſion unto a ſtranger in fee, that then the leſſor ſe reuerſion ſhall haue ſe, And the leſſor grant the reuerſion unto a ſtranger in fee by deed, In this caſe the leſſee ſhall haue ſe by the condition. And the reaſon is, becauſe that the reuerſion is not in the grantor before attornement, and yet the leſſor hath granted the ſame, and againſt this grant, hee cannot plead, That hee did not grant it by the deed. But if the leſſee doe attorne unto the grant, then quere. If the leſſee ſhall haue ſe by the condition, becauſe he is the ſame perſon who ſhould take aduantage of the condition. But it ſeemeth unto ſome perſons, that this attornement ſhall not take

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alway his advantage by force of the condition, because that the fee is in him by the condition before his attornement, for the attornement cannot be so soone done but that there shall bee an instance betweene the grant, and the attornement, and immediatly after that the lessor hath delivered the deed of grant of the reversion unto the grantee as his deede, The fee is in the lessee by force of the condition, which shall not be devested out of him by attornement, if not that it be by matter of conclusion, and the attornement is not any matter of conclusion unto him, &c. But alienare, idem est quod alienum facere. So that notwithstanding that the lessor hath granted the reversion by deed, yet it is not an alienation before attornement. Causa patet, &c. And if the condition be, that if the lessee be ousted within the Terme by his lessor, that then he shall have fee, if the lessor ouste him within the Terme he shall have fee. But Quere, if the condition be, that if the lessee be put out by a stranger, &c. M. 21. H. 7. 11.

731. And it is to know. That Conditions are repugnants. As if a feoffment, or a gift in taile be made upon condition, that the feoffee, or donee shall not take the profit, or upon condition that he shall not do wast, or upon condition that the Wife of the feoffee shall not be endowed, these are void conditions, and the estate is good. And if a lease for life M. 21. H. 7. 10. M. 9. E. 4. 8.

be made upon condition that the lessee shall not doe fealty, it is a void condition. And if a man who hath nothing in black acre, grant unto me a rent charge issuing out of black acre, upon condition that by the grant, I shall not charge his person, it is a void condition, and so repugnant, &c.

T. 7 H. 6. 43. 732. But in the same case, if the grantor at the time of the grant, had been seised of the same black acre in demesn, or in reversion, the condition had beene good. If a lease for life of Land be made upon condition, that if the lessee be impleaded of the same Land, that he shall not vouch his lessor, It seemeth the same is a good condition, yet it is said it is not, because that the reversion in such case is the cause of the voucher, &c. And if a man seised of Land in fee leaseth the same Lands by indenture for yeares, rendring rent, provided allwayes that the lessor shall not distraine for the rent, it is a good condition, because that he may have an action of debt for the rent, &c.

142. 733. If I. S. seised of Land doth lease the same Land unto T. K. for terme of life rendring rent, &c. And T. K. being seised of other Land leaseth the same Land unto I. S. for terme of life, upon condition that if I. S. distraine for the rent reserved upon his lease, &c. that then it shall be lawfull for T. K. to reenter into the same Land which he leased unto I. S. this is a good condition.

7 H. 6. 35. 21. H. 7. 31. 21. H. 7. 11.

734. And

734. And if a man doth enfeoffe a ſtranger, with warranty, provided that the feofee nor his heires ſhall have nothing in value by force of the warranty, it is a good condition, becauſe that notwithſtanding that, the feoffee may take advantage of this warranty be way of rebutter, &c. And if a gift in tatle, or a leaſe for life, or a leaſe for yeares be made upon condition, That the donee, or leſſee ſhall not grant their eſtates, nor any part of their eſtates unto any other perſon or perſons, the ſame is a good condition, by reaſon of the reverſion which remaineth in the donor or leſſor, &c.

735 Now is to ſpeake of Conditions impoſſible, and as to that, Know, that an impoſſible condition is void, But if ſuch a condition be in making of an eſtate the eſtate ſhall remaine good, but eſtates ſhall not be inlarged by Conditions impoſſibles, And if an Obligation be endorſed with a condition impoſſible, the Obligation is good, and the condition is void. And therefore if a man ſeiſed of Lands in fee doth thereof enfeoffe a ſtranger upon condition, that if the feofee doe not goe out of England unto the Church of S. Peter in Rome, and returne againe into England within three dayes next following the feoffment, that it ſhall be lawfull for the feoffor to reenter, the condition is void, becauſe it is impoſſible, and yet the eſtate is good, &c. 4 H 7. 4. 1 H 8. 1.

736. But if a leaſe for life be made upon ſuch conditions, &c. that then the leſſee ſhall have fee in the Land, his eſtate cannot be enlarged by ſuch a condition, becauſe the eſtate not to begin to be enlarged but by the conditiõ perfoꝛmed, and the ſame is impoſſible to be perfoꝛmed, &c. And if I.S. be bound unto T.K. in an Obligation of 20. l. upon condition that if the Obligoꝛ goe Ad terram ſanctam out of England in one day, next inſuing the date of the Obligation, and retoꝛne the ſame day into England, &c. This Obligation is good, and the condition is void. Cauſa patet.

737. If a man be bound in an Obligation upon condition, to be perfoꝛmed in France, the condition is void. But if it can be tried it is good enough, notwithſtanding that it be to be perfoꝛmed in France, As in the time of war, diverſe things are done beyond the Seas which ſhal be tryed by the certificate of the marſhall of the Kings hoaſt, &c.

738. If a leaſe foꝛ yeares be made of a wood by deede indented, and it is covenanted in the deede: That the leſſee ſhall
Pl. 1, 11. 2. 32. have the wood in as good plight as it was at the time of the leaſe made, and during the Terme the wood is deſtroyed by a ſudden tempeſt: At the end of the Terme the leſſoꝛ ſhall not have an action of covenant foꝛ the not perfoꝛming of this covenant, foꝛ it is not poſſible foꝛ the leſſee to perfoꝛme the ſame: But if

ſuch

such a covenant be made upon the lease of a house, and the house be throwne down during the terme, the lessor after the end of the Terme shall have an action of covenant for the not performing of the covenant, Causa patet: But in such case the lessee shall not be chardged in an action of waste, &c.

739. And as to the words which of themselves make estates upon conditions, &c. And of the making of feoffments in mortgage upon condition of the part of the feoffor, and where the feoffor or feoffee ought to demand the money, &c. And where it behoveth him who ought to performe the condition to seeke him to whom the condition ought to be performed, And by what persons, and to what persons the condition ought to be performed, with diverse other good and necessary matters appertaining unto conditions, Master. Littleton who was an honorable sage of the Law hath made a good and necessary declaration thereof in his Chapter of estates upon condition, &c.

740. And it is to know. That if the words of a condition be, Et pro solutione dict. &c. that it shall be lawfull for the feoffor, and his heires to take back the tenements, and to make his profit of them, by these words the feoffor, and his heires may reenter for not payment, &c. The same Law is if the words of the condition be, Et pro non solutione, that the

and his heires may Recipere the Lands, for they cannot be otherwise intended, notwithstanding th t the word Recipere imply a livery to be made of the Tenements, &c. Quere if the words of the condition, that the lesso: and his heires, Pro non solutione, &c. may retaine the Lands, &c. how the words of the condition shall be taken, whether according to the intendment which the Law maketh of the condition, or according to their signification.

741. And therefore if I be enfeoffed of Land, upon condition that I shall give all my goods (Si quæ fuerint) in this case this word (fuerint) shal be taken in the present tence, and not in the future tence, because by the Law it cannot be otherwise intended: For a man cannot give goods in which he hath no property. And if a man be enfeoffed upon condition that he shall give all the pikes in his pond (Si quæ fuerint) in this case (fuerint) shall be taken in the present tence.

742. If a feoffment in fee be made upon condition, that all the doctors in Paul's (Si qui fuerint) shall be at such a place such a day (Fuerint) shall be taken in the present tence, &c. And the common making of Charters is in the perfect tence, viz. Dedi & concessi: and yet they shal be taken in the Present tence. If a man be enfeoffed upon condition that hee shall 35 H. 6. 11 be Non suit in all his actions in the common Pleas (Si quæ fuerint) (Fuerint) shall

shal be taken in the Present tence: But if a man be enfeoffed upon condition that he shall give all his goods in London unto I S. (Si quæ fuerint) in this case (Fuerint) shall be taken for the time past; for he may have goods which were in London, but now are not there.

743. If a man be bound in 20. l. &c. upon condition that I. F. Et omnes alii si qui fuerint feoffati ad usum dict. I. de manerio de B. relaxaver. totum jus suum quod habent, &c. Cuidam T. F. filio suo, & hæred. dict. I. F. Et scriptum illud sigillo suo signat. ad P. T. ad usum dict. T. F. citra tale festum deliberaver. quod tunc. &c. Now this word (Fuerint) shall be taken for the time past, and it shall bee intended that those who were his feoffe shall release, for it may be that hee had feoffees who were diseised, and yet they had right according to the words following, viz. totum jus quod habent, and the intent of the condition was, that the release should be good and profitable, &c. 8 Ass. p. 5.

744. If a man make a feofment reserving rent, &c. and Pro non solutione, &c. that the feoffor, and his heires may reenter, Now by these words they shall reenter: for the word (may) doth imply liberty in the parties to whom it doth extend: If the words be, that the feoffee and his heires (pojent) solvere, &c. And pro non solutione, &c. That it shall be lawfull for the feoffor, and his heires to to reenter; yet the feoffor and his heires shall

shall not reenter Pro non solutione. Causa patet.

12. Ass. p. 5. 745. If a lease be made for life upon condition, that if the lessor or his heires pay unto B. or his heires 10 l. at such a day, that it shall be lawfull for the lessee, and his heires to reenter, and if they doe not pay it within the time, and the lessee pay unto the lessor, or his heires 10. l. at such a day which is after the day of payment, which ought to be by the lessor or his heires, that then the lessee shall have, and hold the Land to him, and his heires for ever: And the lessor nor his heires doe not pay the money, &c. nor doth the lessee pay, &c. yet the lessee shall hold the Land during his Terme.

M. 14. H. 8. 27. 746. If a feoffment be made upon condition that if the feoffor paie 10. l. unto the feoffee, and goeth to Rome before such a day, that it shall be lawfull for the feoffor, and his heires to reenter: If he pay the 10. l. before the day, and doth not goe to Rome before the day he shall not enter, because the condition is by the word (Et) which is a copulative; But otherwise it shall be if the condition be by this word (vel) because that is in the disiunctive, &c.

747. Now is to shew, how, and in what manner a condition in fait shall be performed, &c. And as to that there is a difference when the condition is to bee performed to the party, and when it is to be performed unto a stranger, &c.

M. 4 H. 7. 4

When it is to be performed betweene the parties, it is not requisite that the condition be performed in all things as is expressed, if the parties assent thereunto, &c. But if the condition be to be performed unto a stranger, it ought to be performed according unto the words of the condition in all effectuall points, if not that it be in speciall cases.

748. And therefore if J be bounden unto I.S. in 20.l. to pay him 10.l. at a certaine day, and in a place certaine, If J pay him the 10.l. before the day, &c. and at another place, and the obliger doe accept thereof, the condition is performed. But in the same case: If J pay unto the Obligee the 10.l. after the day of payment, and the Obligee doe accept thereof, yet the condition is not performed. And when a man is bounden in a greater sum to pay a lesser sum at a place certaine, the Obligee is not bounden to accept of the sum at a nother place then is appointed in the condition: But yet if hee doe accept of the same at another place it is good. &c. If I.S. be bounden in 20.l. to T.K. to pay him 10.l. And T.K. is endebted unto a stranger in 10. l. And the other obliger by the Commandment of the Obligee paie the 10.l. unto the creditor of the Obligee in allowance of the 10.l. comprised in the condition; the same is a good performance of the condition. And in the same case in an action of debt brought by the Obliger against

M. 41. E. 3. 20.
H 43. E. 3. 2.
17. Ass. p. 2
T. 9. E. 4. 2.

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2. E. 4. 3.
M. 19. E. 4. 1.
T. 9. E. 4. 23.

M. 2. E. 4. 14.
M 31. H. 6. 11.
H 27. H. 6. 10.
H 9. H. 7. 18.
T. 11. E. 4. 3.

against the Obligee, the Obligee may make his defence and pray auditum, &c. and read that he paid the 10. l. unto the Obligee by the hands of the creditor of the Obligee, &c.

749. If a man be bounden in 100. l. to pay 100 markes unto the Obligee, &c. And the Obligee accept of 10. l. of the Obligor in satisfaction of the 100 marks, it is a good performance of the condition, and yet some have said the contrary, because that 10. l. cannot be satisfaction of 100 marks, &c. But that is not materiall in his case, because the Obligee is content therewith, &c. And if the obligee hath received a horse, or a gold or silver ring, or a quarter of wheate, or a cup, &c. of the Obligor in satisfaction for the 100 markes, it is a good performance of the condition of what value soever the horse or, &c. be. But if I.S. be bounden unto T.K. in 200. l. to enfeoffe T.K. of the manno; of Dale, and the Obligor doth enfeoffe T.K. of the manno; of Sale in allowance of the manno; of Dale, and he accept thereof, yet the condition is not performed, because when the condition is to be performed of a thing not comprised within the obligation, it ought to be performed of the same thing comprised in the condition if not that it be in speciall cases.

H. 7 h 7. 4. H 9. h. 8.

750. And therefore if a man be bounden in 100 Markes to make a Recognisance of 39. l. unto the Obligee in the

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Common pleas at quindena S. Hil before, &c. And the Obligor doth pay 10. l. unto the obligee for satisfaction of the condition, this is no performance of the condition, Timen quere, becaus some have said, That the Recognisance is not to be made but for the assurance of 39. l. the which 39. l. cannot be intended of a thing within the obligation.

751. But if the condition of the bond be, that if the obligor make a sure, sufficient, and lawfull estate of and in 20. s. rent issuing out of his manner of Dale unto the Obligee and his heires, to have and perceive the same 20. s. rent to him, and his heires, with clause of distresse, that then, &c. And the obligor doth grant unto the obligee one annuity of 20. s. for 6 yeeres, that is no performance of the condition: The same Law is, if the obligor had leased the manner of Dale unto a stranger for yeares, or for life, in allowance of the grant of rent, according to the condition of the Obligation. And if a man be bounden unto I. S. in 100. l. to grant unto him the rent and farme of such a Will, &c. if the Rent be granted unto the Obligee to take effect in him by way of retainer, the condition is performed. Causa patet. H. 37. H. 6. 18. 146.

752. But if a man be bounden in 100. l. to make a Recognisance of 40. l. before such Justices, and maketh them at a certaine day, &c. and with the consent of the obligee the obligor doth lease a house

house unto him for the terme of his life in satisfaction thereof, this is no performance of the condition.

753. If J be bounden in 20.l. &c. to deliver ten quarters of wheate, or foure
11.9.H. 7. 18. Horses, or ten Oxen, or forty Sheepe, and J with the assent of the obligee pay
14.13.H.6. 24. unto him 5. l. in satisfaction thereof, the condition is not performed, Tamen Quære. &c.

754. And it is to know, that if the obligee be party or privy unto any act done, by which the condition cannot be performed, then the obligor shall be discharged of the Obligation, if not that it be in speciall cases. As put case: I.S. is bounden in 100.to T.K. Abbot of Westminster, &c. to enfeoffe C. D. of the manner of Dale before such a day, &c. And before the day, C.D. is a Monke professed under the obedience of the same Abbot who is the obligee; in this case the obligor is discharged of the Obligation; But Quære if C. D. be deceased before the day the feoffment be to be made, whether I.S. be
21.Ass.p 2 bounden to enfeoffe him or not. But if the condition be to be performed unto a straunger, and it may lawfully and possibly be done: And the obligee be no party nor privy to any act done by which the condition ought to be performed, then such condition ought to be performed in all things as it is, if not that it be in speciall cases.

755. And therefore if I. S be bounden unto

unto me in 10. l. to pay unto T. K. ten markes before such a day, at such a place, &c. And before the day the obligor doth give unto T.K. a horse in satisfaction for the ten markes, and T.K. doe accept thereof, yet the same is no performance of the condition, for a stranger by his act without my assent shall not take away my duty, &c. The same Law is if the obligor had paid the ten markes before the day, at another place then is comprised in the condition. So shall it be if there be a day appointed certaine in which the payment ought to be, and T.K. doe receive it at another day, &c. 36 H.6. 9.

756. And if a man be bounden unto I.S. in 100 l. to marry his daughter before such a day certaine, notwithstanding the obligor before the day often tender unto the daughter for to marry her, and she refuse, so as the obligor cannot performe the condition, the obligation is forfeited, because the condition was lawfull, and possible to be done, and is to be done unto a stranger, and the obligee did not doe any thing whereby it might not be performed, The same Law is if I be bounden unto C.D in 20. l. that T. shall enfeoffe I.S. of black acre before such a day certaine, and T. doth not enfeoffe I.S. before the day of black acre, I have forfeited my bond, because that by the condition I have taken upon me that such a feoffment shall be made. 4 H.7.3. 11 H.4.18 20 E 4.2. 30 H.6.12

757. And if I be bounden to T.D. in 10. l.

to

to enfeoffe Allice Stile of the manner of Dale before the feaſt of Eaſter, and before the condition performed, and before the day I marry Allice Stile, and the marriage both continue till the day be paſt, the obligation is forfeit, and notwithſtanding that before the feaſt of Eaſter, I doe enfeoffe a ſtranger of the manner of Dale for to enfeoffe my Wife, and hee doth ſo, yet I have forfeited my Obligation.

147.

P.3.E.4.2. 758. But if I be bound in 20 l. unto T.K. to appeare before the Juſtices of the Common Pleas Octabis Michaelis, to anſwer to ſuch a one in an action there brought againſt me, &c. and at the day, I come into Court and appeare, and the Plantiffe is eſſoined, ſo that I cannot anſwer unto him, in this caſe, my bond is ſaved: But if I be bounden unto T.K. in 4 l. to ride with I. C. ſuch a day unto Dale, and I. C. will not ride that day, I have forfeited my bond, &c. But if I be bound unto B. in 10. l. unto the uſe of T. to enfeoffe T. alone of the manner of Dale, &c. And I doe all that lieth in me for to enfeoffe him, and hee will not be enfeoffed thereof, my bond is ſaved. Caſe patet.

P.3.E.4.2.

M.8.E.4.25

759. If a man be bound in 20 l. unto I. S. upon condition that the obligee ſhall enfeoffe a ſtranger of the manner of Dale before ſuch a day, &c. And the Obligee will not enfeoffe the ſtranger, &c. the bond is forfeited, notwithſtanding that hee, viz. the

the obligee is the impediment that the condition cannot be performed, because that the obligor tooke upon him by the words of the condition, that the obligee should so doe. But if the words of the condition had beene, If the obligee doe enfeoffe a stranger, &c. and the stranger doth require the obligee for to enfeoffe him, and he refuseth so to doe, the Obligation is not forfeited.

M.22.E.4.15. 17 E.4.5. 9 H.7.20. 29.H.6.11.

760. If a man be taken upon a Capias, and findeth sureties by bond to appeare Octabis Trin. And the Sherife returne the writ at the day, and the same day a writ of adjornement is directed unto the Justices to adjorne the Court untill Quindena Michaelis. And the Obligor commeth, and sheweth unto the Court, how that he was bound for to appeare at the same day, and prayeth that they would record his appearance, and the Justices will not record his appearance, but bid him keepe his day at Quindena Michaelis, the bond is not forfeited in so much as if hee appeare at Quindena Michaelis, by this appearance hee shall have his bond. And if in the same case the action had beene discontinued, by the deinise of the King before Octab. Trin. and the obligor had not appeared, Octabis Trin. yet the bond had not been forfeited.

M.31.H.6.19. M.38.H.6.3.

761. But if I.S. be bounden unto T.K. that G.F. shall appeare Octabis S Trin. in the common Pleas in an action of debt brought by the said T. K. against the

H.15 H.7.2. T.9.E.4.15

said G. F. retorneable at the same day, and G. F. doe appeare the same day, and his appearance is not recorded, The bond is forfeited, But if in the same case G. F. dieth before Octab. Trin. the bond is saved because the condition is become impossible by the act of God.

762. And in the same case in an action of debt, brought upon the Obligation, it is no plea for the defendant to say that the writ was not returned, if so be that he that ought to appeare hath day by the Roll: But it is a good plea to say that he who was to appeare was imprisoned at Dale, within the County of Midlesex by the Plantiffe, or at his suit, before the Day of the returne of the writ, and continued there in prison untill the Day of the returne of the writ was past, &c. And the reason is, because hee himselfe is the cause that the Condition cannot be performed.

148.

31 H. 6. Hurre 60. T. 9. F. 4. 2

763. If a sole woman seised of Land in fee, doe by deed indented thereof enfeoffe a stranger reserving Rent unto her, and her heires, the Rent payable yearely at the Feast of Easter. Et si contingat redditum prædict. a retro fore in parte vel in toto non solvit, quod donque benè liceat, to the feoffor, and his heires to reenter, and the feoffor and the feoffee doe entermary, and the marriage doth continue betweene them for diverse yeares, &c. yet the condition is not broken, because that during the marriage betwixt them the

the rent is in ſuſpence, and the cauſe of the ſuſpenſion is, that the woman was a party to the ſame by her agreement, and during the time that the rent is in ſuſpence it ought not to be paid, &c.

764. But in the ſame caſe if the feoſment had beene made upon condition to pay 10. l. unto the woman who is the feoffor at the feaſt of Eaſter, &c. And afterwards the feoffor and the feoffee doe intermary before the payment of the mony, and before the day of payment, and during the marriage the day doth paſſe, the condition is performed, becauſe that the money is but a ſum in groſſe, and a duty, ſo as it ſhall be preſently extinguiſhed in the husband, becauſe it is but a perſonall duty, in ſo much, as if the woman had made a feoſment unto a ſtranger before the marriage upon ſuch a condition, and the husband during the marriage, and before the day of payment, releaſe all manner of conditions, duties and demands unto the feoffee, by this releaſe the condition, and the duty is extinct, and determined. But if the husband releaſe all entries, and demands unto the feoffee after the day of payment, if the Wife ſurvive her Husband, ſhee may enter for the condition broken, notwithſtanding her Husbands releaſe, and the reaſon is, becauſe the condition was broken before the releaſe, at what time the Wife had title of entry into the

unto I. S. upon condition, That if the Obligor goeth unto Rome with the Obligee at the request of the Obligee, That then, &c. In this Case the Obligor is not bounden to goe unto Rome with the Obligee, but at his request, &c. If one bee bounden unto mee in 20. l. That at what time so ever that I shall come unto the Towne of Dale, that it shall bee lawfull for mee to enter into the House of the Obligor there, and if the Obligor doe not suffer mee to continue three daves, and three nights there, that the Obligation shall stand, or otherwise shall bee void, Now if the Obligor see mee comming unto his House, shut up the doores, and goeth unto another place, so as I cannot enter, the Obligation is not forfeited, for in this Case the Obligee ought first to enter, &c.

N. 3. 11 9.

704. If a Parson of a Church bee bounden in 100. l. unto an Abbot, that if within a certaine time hee will resigne his Benefice for a pention as shall bee agreed betwixt them, that then, &c. And they agree that the Parson shall have a yearely pention of 4. l. In this case it behoveth the Abbot to tender unto the Parson a sufficient deed of the pention, other the Parson is not tied by this Obligation, and Condition, for to resigne. And so in diverse Cases the first act ought to bee done by the Obligee. And sometimes the first act concerning the

the condition of an Obligation ought to be done by a stranger, &c.

766 And therefore if I bee bounden unto I.S. in 100.l. to stand unto the arbitrament, and judgement, &c. of T.K. and D.C. and they make no award, The Obligation cannot bee forfeited, &c. And if a man bee bounden unto mee in 100.l. To make a sufficient and lawfull estate by the advise of I.D. &c. If I. D. doe not give any advise, and the Obligor doe not make any estate, &c. 7.E 4.13. the Obligation is not forfeited. And if I.D. doe give advise, and the Obligor doth make estate accordingly, the condition is performed, whether the estate bee sufficient or not, or lawfull or not, &c.

767. But If a man bee bounden in 100.l. That if hee shall make unto the Obligee a sure, sufficient, and lawfull estate in fee in certaine Lands by a day certaine, That then, &c. In this Case the estate ought to be sure, sufficient and lawfull, otherwise the Obligation is forfeited.

768 If a man bee bounden in 100.l. to make as sure, &c. estate unto the Obligee as shall bee devised by the Councell learned in the Law of the Obligee, &c. In this Case the Councell of the Obligee are to advise the estate, and notice thereof ought to bee given unto the Obligor, otherwise hee is not bounden

was there ready to receive the money, without that that the obligor was ready there to pay the same, &c. But if the Obligee bee disabled to take according to the condition it behoveth not the Obligor to tender the performance thereof unto him, if not that it bee in speciall cases.

769. And therefore, if I bee bounden unto a sole Woman in 100.l. upon condition that if I doe marrie her before such a day, that then, &c. And before the day the Woman taketh a stranger to bee her Husband, and the marriage betweene them doth continue untill the day be past, In that case I am not bounden for to tender the performance of the Condition unto her, because shee was not of abilitie for to receive the same, &c.

770. And if I bee bounden in 20.l. upon condition, That if I doe enfeoffe the obligee of bl. acre before such a day, that then, &c. And before the condition performed, and before the day, &c. The obligee doth enter in Religion, and is professed, and continueth professed untill the day doth come, In this Case it behoveth not he to be ready upon the Land to make the feofment, &c.

771. If a man bee bounden in 100.l. unto A. S. upon condition that if the obligor doth marry her before such a day that then, &c. And before the day the Obligee,

Obligee, &c. is a Nunne professed, and after, before the day the Obligor is a Fryer professed, and then the day doth come, the Obligor and the Obligee being both professed in Religion, and afterwards they are both dereigned, The Obligation is not forfeited; The same Law is if they both are disabled at one and the same time, &c.

772. But know. That sometimes the first Act as unto the performance of the condition, ought to bee done by the Obligee, otherwise the Obligor is not bounden to performe the condition. As if a man be bounden unto mee in 10. l. That I.S. shall serve mee In omnibus mandatis licitis & honestis for a whole yeare certaine, In this Case if I doe not command I.S. to serve mee, by reason whereof hee doth not doe mee service, the Obligation is not forfeited: But if the condition were that I. S shall bee a good and faithfull servant unto the Obligee for a whole yeare certaine, It behoveth that in this Case I.S. tender his service unto the Obligee, notwithstanding that the Obligee doth not command him any service, otherwise the Obligation is forfeited. But if in such Case I.S. tender his service unto the Obligee, and hee refuse to have any service from him, the Obligation is not forfeited, &c. 6 E. 4 7.

773. If a man be bounden in 20. l.

Lands, and Tenements, which title of entry may descend unto her heire, &c.

795. But if a sole woman seised of Land, doe thereof enfeoffe a Stranger by deed indented, upon condition that the feoffee shal enfeoffe the woman of Ma.acre before the Feast of Easter, &c. And before the Feast of Easter, and before the condition be performed, the feoffor and the feoffee doe entermary, and during the mariage, the day before which the condition ought to be performed passeth, Quere whether the condition be performed or broken; and if the condition be broken the Husband is presently seised of the same Land, in the right of the Wife, &c.

796. And if a man doth enfeoffe mee by deed indenter, upon condition that I shall pay unto him 10. l. at the Feast of Easter, And the feoffor maketh mee his Executor, and entreth into Religion, and is professed before the condition performed, and before the day wherein it ought to bee performed, and continueth in Religion untill the day bee past, and afterwards hee is derenigned, Yet I shall keepe the Land for ever, &c.

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797. If a man be bounden unto mee in 100. l. to enfeoffe mee of the manor of Dale before such a day; and before the day the Obligor doth enter into Religion, and afterwards the Obligee doth enter into Religion, and the day doth

doth come, and then both of us are dereingned, It seemeth that the Obligation is forfeited, because there was a time for the obligor to tender the money, and because the obligor at the first hath disabled himselfe, and all times after till the day before which the condition ought to bee performed incurred, hee remaineth to performe the condition, and the condition is for his advantage, and hee ought to doe the first act, in so much as if the obligor bee not ready upon the Land, nor other for him to make the feoffment, and the obligee doth not come thether nor any for him, yet the bond is forfeited, for in such Case in an action of debt brought upon the Obligation, The issue shall bee whether the obligor were ready upon the Land, to make the feoffment or not. &c.

758. And if a man bee bounden unto mee in 20. l. to pay unto mee 13. l. at Paules such a day, at which day the the obligor nor any for him come thither, the Bond is forfeited, because the obligor ought to doe the first act, and therefore ought to bee there ready, &c. For if in an action of debt brought upon the Obligation against the obligor, &c. Hee sheweth the condition, and that hee was ready at Paules according to the condition, and that the Plantiffe, nor any for him was there to receive the money; The Plantiffe may say that hee

den for to performe it, &c. And it it said if in the same Case the Obligee hath foure men learned in the Law of his Councell, and two of them give advise, and the other two give no advise, The Obligor, in an action of debt brought against him upon the Obligation, may plead Quod Consilium of the Plantiffe non dedit advisamentum. For the advise in such Case ought to bee given by all the Councellours learned in the Lawes, &c. As if the condition were, That the Obligee, &c. make such estate as the Justices of the Bench shall advise, and there are foure Justices, and two of them give advise, and two give no advise, The Obligor is not bounden by such advise. Tamen quære.

778. But it is to know, That if a man bee bounden in 100. l. unto I. S. to enfeoffe the Obligee such a day of the manner of Dale, &c. It behoveth the Obligor in this case to bee ready upon the Land, to make the feoffment at the last instance of the day appointed, &c. without any request made by the Obligee. And in the same case the Obligor needeth not give notice thereof unto the obligee. Causa patet.

779. But if a man bee bounden unto mee in 20. l. to enfeoffe I. S. alone of the manner of Dale before such a day, In this case the Obligor ought to make the feoffment unto I. S. at his

perill,

perill, otherwise the Bond is forfeited: But if I doe enfeoffe I. S. upon condition, That hee shall reinfeoffee mee, In this case I ought to make request to the feoffee, otherwise the feoffee is not tied to reinfeoffe mee. But if the feofment bee made of certaine Land upon condition, to infeoffe a stranger of the same Land, It behoveth the feofee in this case to make a tender of the feofment unto the stranger to whom it is to be performed, &c. 2. H. 7. 3. 3. E. 4. 1.

780. If a man grant unto mee annuity payable at a certaine day, and no place is limitted where it shall bee paid, And the grauntour is bounden unto mee in 20. l. that hee shall pay unto mee the Annuitie at every day that it ought to bee paid: It behoveth that the Grauntor seeke mee in what place soever I am, if I bee (Infra quatuor Maria) to pay unto mee the Annuitie, and that is to save the forfeiture of his Obligation; For the grantor was not bounden to pay unto mee the Annuitie by reason of the grant without request, &c. But if the Obligor at the day in which, &c. tender unto me the Annuitie, and praieth mee for to make an acquittance unto him, and I will not make acquittance unto him, by reason whereof hee doth not pay unto me the annuity; yet he hath not forfeited his Obligation, &c.

781. And

9 E. 4 13. 786. And therefore if a Taylor bee bounden unto mee, &c. upon condition, That if I bring unto his Shoppe three ells of Cloath, which shall bee cut out, and if the Taylor make mee a Gowne thereof that then, &c. And it is not appointed in the condition who shall cut out the Gowne, therefore it shall bee taken, that hee who hath most skill to doe it shall doe the same, which is the Obligor, &c. And if the condition were, That if the Obligee bring three Ells of Cloath unto the Shop of the Obligor, which shall bee measured, and it is not appointed by whom it shall bee measured, Then they shall bee measured by the Obligor, Causa patet, &c.

787. Now is to shew at what time conditions shall bee performed, if no time bee appointed for the performance thereof: And as unto that, Know, That

T. 15 E. 4. 23. M. 33 H. 6. 24. if the conditions bee to bee done onely for the profit, and benefit of a Stranger, Then it behoveth that they bee done, and performed within convenient time, if not that it be in speciall Cases.

788. And therefore if a man bee enfeoffed of Land, upon condition that hee shall marry the Daughter of the Feoffor, and no time is limitted when, nor within what time it ought to bee done, the Feoffee ought to performe the same within convenient time, because that

that the Daughter of the Feoffor is to have benefit, and profit by the performance of the condition, viz. Advancement, for it cannot bee intended that the Feoffment was made unto any other intent, &c.

789. If a man bee enfeoffed upon condition, that the Feoffee shall enfeoffe a stranger, it behoveth the feoffee for to tender the feoffment unto the stranger within convenient time, &c. But if a man bee bounden in 10. l. unto I. S. to pay 4 l. unto a stranger, and it is not appointed when the 4. l. shall bee paid, If the Obligor pay it unto the stranger at any time during their lives the Bond is saved. And the reason is, because that the condition of the Bond is for the benefit, and profit of the Obligor. The same Law is if the condition of the Bond bee, That the Obligor shall enfeoffe a stranger of, &c. and no time is appointed when the feoffment shall bee made, &c.

790. And notwithstanding, That it bee commonly said, That the condition of an Obligation shall be allwayes taken for the benefit, and advantage of the Obligor, yet if a man bee bounden upon condition, That if hee or his Feoffees of his manno: of Dale grant unto the Obligee 20. s. Rent for the Terme of life issuing out of the same manno:, before such a day certaine, That then, &c. M. 21. H. 6. 10. P. 4 H. 7. 6.

of debt brought upon the Obligation, The obligor shall plead the condition, and the tender and refusall; but shall not neede to say, that hee is yet ready, &c. But it is said by some, That if the condition of the Bond bee of a Horse, which Horse was due unto the Obligee, before the Bond made, by reason of a sale thereof made by the Obligor unto the Obligee, or other perhaps that the Horse were delivered by the Obligee unto the Obligor for a certaine time, &c. Or by other meanes perhaps the Horse is due to the Obligee by the Obligor, &c. Notwithstanding that in such Case the Obligee doth refuse the Horse, when it is tendred unto him, according unto the condition of the Bond, so as by that the summe comprised in the condition of the Bond is not forfeited, yet the Obligee shall have an action for the Horse as the Case is. But I conceive the Law to bee contrary. Because the Obligee hath Bond for the same Horse, if not that the Horse were first delivered by a matter in writing, &c. And the same Law is, of all other the like things, &c. Mutatis mutandis. M.8.E. 4. 22.

78. If a man bee bounden in 10. l to deliver unto the Obligee 20 quarters of Wheate at a certaine day, and it is not appointed in what place they shall bee delivered, The Obligor is not bounden to carry the Wheate with

with him unto every place, but it sufficeth for him to say unto the Obligee, Sir, your Wheate is ready for you, where you will have it to bee brought unto you: And if the Obligee will not appoint unto the Obligor a place where the Wheate shall bee brought, the Bond is saved, &c. And if the Obligor at the day bring the Wheate unto the House of the Obligee, and say unto the Obligee, Sir, I have brought unto you your Wheate according to the condition of the Bond, I pray you receive it, and hee saith unto him, that hee will not receive it there, but hee will receive it at another place, and the Obligor will not carry the same unto the other place, yet the Bond is saved. And in an action of debt brought against the Obligee upon the Bond, hee may plead the condition, and the speciall matter; and not tender the Wheate in Court, &c. And it is to know that if any thing bee comprised in the condition of a Bond, and it is not limitted what person ought to doe the same, Then the Obligor or Obligee, viz. Hee who hath the most skill ought to doe the same: But if neither the Obligor, nor the Obligee have knowledge to doe the same, or if either of them hath severall skill, &c. Then it shall bee done by the Obligor, if not that it bee in speciall Cases, because that the condition of the Bond is for the advantage of the Obligor.

786. And

781. And if a man bee bounden unto mee in 20. l. to pay unto mee a lesser summe at such a day, and doth not appoint any place where the payment shall bee, The Obligor ought to seeke mee, &c. and to tender the lesser summe according unto the Condition, &c.

782. If a man be bounden in 20. l. to stand unto the award of I. S. &c. and I. S. maketh an award which is void, yet the Obligor ought to performe the same for to save the forfeiture of this Bond, if the award bee not impossible, or against the Law, as to kill a Man, or a Woman, or to burne Houses, or to steale goods, or any such like thing, &c. But the Obligor is not chargeable in an action upon an arbitrament which is void, And in the same Case if I. S. hath awarded that the Obligor pay unto the Obligee 20. s. before the feast of Easter, and the Obligor before the said Feast tender the 20. s. unto the Obligee, and hee refuseth the same and bringeth an action of debt against the Obligor upon the Bond, &c. hee may plead the condition, and the award, and say that hee tendred unto the Obligee the 20. s. accordingly, and that hee refused the same, &c. without tendering this money in Court, because the Obligee might have an action of debt upon the arbitrament for the 20. s.

10. H. 6. 36
33 H. 6. 2.

and

and also because that the 20.s. were not a duty to the Obligee before the arbitrament, &c. 7.E.4.3. 20.E.4.1 22.E.4.15.

783. If a man be bounden in 20.l. to pay 10.l. at a certaine day, and the Obligor doth tender the money unto the Obligee accordingly, and hee refuseth the same, yet in an action of debt brought upon the Obligation against the Obligor, It behoveth the Obligor to plead the condition, and the tender and the refusall, and say, that hee is yet ready to pay the 10. l. and tender the same in Court, because it was a duty before the Obligation, and the Obligor is not thereof cleerely discharged by the Obligee, but hee is bounden by the obligation to pay the same upon a payne of forfeiture of a greater summe, and the Obligee cannot have an action to demand the same, but upon the obligation. The same Law is notwithstanding the lesser sum were payeable at a place certaine, &c.

784. But if the Condition of the Obligation bee of matter without the Obligation, &c. As to enfeoffe the Obligee, or to give unto him a Horse, a Gowne, a Hauke, a Knife, a paire of Spurres, a Lance, or a Cap, &c. at a day certaine, or any other thing which is not parcell of the duty comprised in the Obligation, If the Obligee doth refuse any such thing, &c. In an action of T 18 E.4. 9 H.7.E.4.4 M.47.E.1. 19.

&c. And the Obligor hath three Feoffees of his mannor of Dale, and two of his Feoffees grant the Rent unto the Obligee, this is no performance of the condition: And yet the Feoffees of the Obligor have granted the rent: But by these words (his Feoffees) shall be intended all his Feoffees, &c.

791. If a man bee bounden, &c. upon condition, That if the obligor sufficiently prove that it was the Will of C.D. That T.K. should make an estate unto the Obligor of Land in Fee, &c. That then &c. In this Case it is most for the benefit, and advantage of the Obligor to make proofe by witnesses before some honest men in the Countrie, and yet the proofe ought to bee made by an enquest, for the most sufficient proofe in Law is by a Jury. And the condition doth not mention in what manner the proofe shall bee made, nor before what person, but saith onely that it shall bee sufficientlie proved. And therefore the Law shall say, That it shall bee proved by the most sufficient proofe which is by Enquest: But if the words of the condition are, That hee shall make the proofe before such a one, &c. which are not Justices, &c. Then the proofe shall not bee made by Jury, Or if the Condition bee, That if it bee proved sufficientlie before such a day, &c. Before A. B. and C. D. Justices

ſtices of our ſoveraigne Lord the King, and indeed they are Juſtices of Peace, or Quorum, and not Juſtices of the one Bench or the other, nor Barons of the Exchequer, nor any ſuch Juſtices which may make a tryall by Jurie, Then the proofe ſhall not bee by Jurie if not that the proofe bee to bee made by Inditement. And notwithſtanding that the proofe bee to bee of ſuch a thing as may bee tryed by Jury, yet if the proofe bee to be made at ſuch a time, in which they have no power to take an Enqueſt, the tryall ſhall not be made by Enqueſt, &c.

792. If a man bee bounden unto T. K. upon Condition, That if the Obligor doe acquit and diſcharge the Obligee before the Feaſt of Eaſter, &c. of an yearelie Rent of 20. s. againſt R. with which Rent all the Lands of the Obligee are charged unto R. for the terme of his Life. That then, &c. Notwithſtanding that the Obligor doe the ſaid Rent unto R. at every Terme it ought to bee paid untill the Feaſt of Eaſter bee paſt, and requireth an Acquitance thereof made unto the Obligee by the ſaid R. in writing ſealed, And the ſame is delivered by R unto the Obligee as the deede of the ſaid R. yet hee hath forfeited the ſumme of money comprized in the Obligation, becauſe the conditi-

on shall bee taken, That hee ought to discharge the Obligee of the said Rent, in the right, viz. to determine the Rent for ever, &c.

793. And it is to know, That if I doe enfeoffe a Stranger of Land upon condition, that hee shall reinfeoffe mee, and no time is limitted when the Feofment shall bee made, Then the feoffee ought to make the Feofment when hee is required if the request bee made at a lawfull time, &c.

44 E. 3. 7. And it is said, That by such Feofment without other condition, The Feoffee is seised unto the use of the Feoffor, and his heires, for by the condition the feoffee is not to have any profit, but the Feoffor is to have backe the Land by the Condition, so as there is not any Condition by which the use may bee altered. Tamen Quære of the use. But it appeareth upon the matter, that the Feofment nor the condition is not made for the benefit of the feoffee, &c.

794. But if the Feofment bee made upon Condition, that the Feoffee shall pay unto the Feoffor ten pounds and no time is limitted when the money shall bee paid, In this Case the Feoffee may performe the Condition at any time during their lives, viz. during the life of the Feoffor, and the Feoffee, for in this Case, the Feoffee

fee is seised of the Land unto his owne use by the reason of this Condition, so hee hath benefit, and profit thereby, and the Feoffor is to have the 10. l. for the Land, &c.

795. If lessee for twenty yeares of a House grant his estate unto a stranger upon condition, that hee shall obteine the good will of his Lessor, and the stranger openeth the matter unto the lessor, and the lessor saith that hee shall not have but the House which is fallen, that hee, viz. the stranger shall have the same, And after the stranger obteineth the good will of the Lessor of his Graunter, The condition is performed, notwithstanding that the Grauntee did not obtaine the good will of the Lessor of his Graunter, in three or foure yeeres after the Graunt, for know the condition was unto the profit of the Grauntee: And it is not limitted when it shall bee, and therefore it is sufficient for him to obtaine his good will of the Lessor of his Graunter within the Terme, And the words of the Lessor of his Graunter unto the stranger shall not change the Condition for a Condition cannot bee broken nor determined if not by Acts done betwixt the parties, &c. if not in speciall Cases, &c. M. 18 E. 4. 16. H. 14. H. 8. 22.

796. And therefore if I doe enfeoffe I. S. to enfeoffe T. K. And I. S. said

faie unto C. D. That hee will never enfeoffe T.K. by these words the Condition is not broken, But if hee had said such words to T. K. the Condition had beene broken. And if R.M bee
H. 4 E.F.3 4. bounden unto H. S. in twenty pound, upon Condition that if T. A. bee not content at his returne from beyond the Seas with the presentment which the said H. hath made to the said R. to the Church C. in Dale, &c. And that hee then resigne, That then, &c. T.A. commeth unto C. and disagreeth unto the presentment, and saith that hee will that one I. S. his Cosen shall have the same, and prieth the said R. M. that hee will resigne, and hee refuseth. Now if afterwards the said R. M. come unto T. A. unto another place, and say unto him that hee was presented unto the same Church, and demand of him that hee acknowledge the same, and hee say unto him that hee is content therewith, Yet notwithstanding this agreement after the disagreement the Obligation is forfeited. Tamen quære. But if the Condition hath relation unto the Act precedent, and no time is limitted when it shall bee done, yet it ought to bee done when the precedent Act is done if not that it bee in speciall Cases.

797. And therefore if I. S. bee bound-

den

den in twenty pound unto mee upon Condition, that if I doe Enfeoffe him of bl. Acre that then hee will pay unto mee ten pound, &c. in this Case presentlie when I have enfeoffed the Obligor of bl. Acre hee ought to pay unto mee the ten pounds, notwithstanding that there bee no time limitted when it shall bee paid.

798. And if I doe enfeoffe a man of Land upon Condition, That if I. K. give unto him ten Pounds, or goeth unto Rome such a day, &c. That then the Feoffee shall pay unto mee ten Pounds, &c. Now these ten Pounds ought to bee paid when I. K. hath given unto the Feoffee, or gone to Rome before the day limitted, notwithstanding that no time bee limitted when it shall bee paid, because it hath relation unto an Act precedent, &c.

799. If I. S. bee bounden unto T. K. &c. upon Condition that if it happen the goods which T. K. hath delivered to C. D. to bee taken or purloined out of the possession of the same C. D. and then the said C. D. pay and satisfie unto the said T. K. for such goods so taken, That then the Obligation, &c. In this Case the satisfaction for the goods ought to bee made presentlie after the taking or purloining of them out of the possession of the said C. D. &c. M. 33. H. 6. 52.

800. And